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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 258. 42.

THE STATE OF ARKANSAS, APPELLANT,

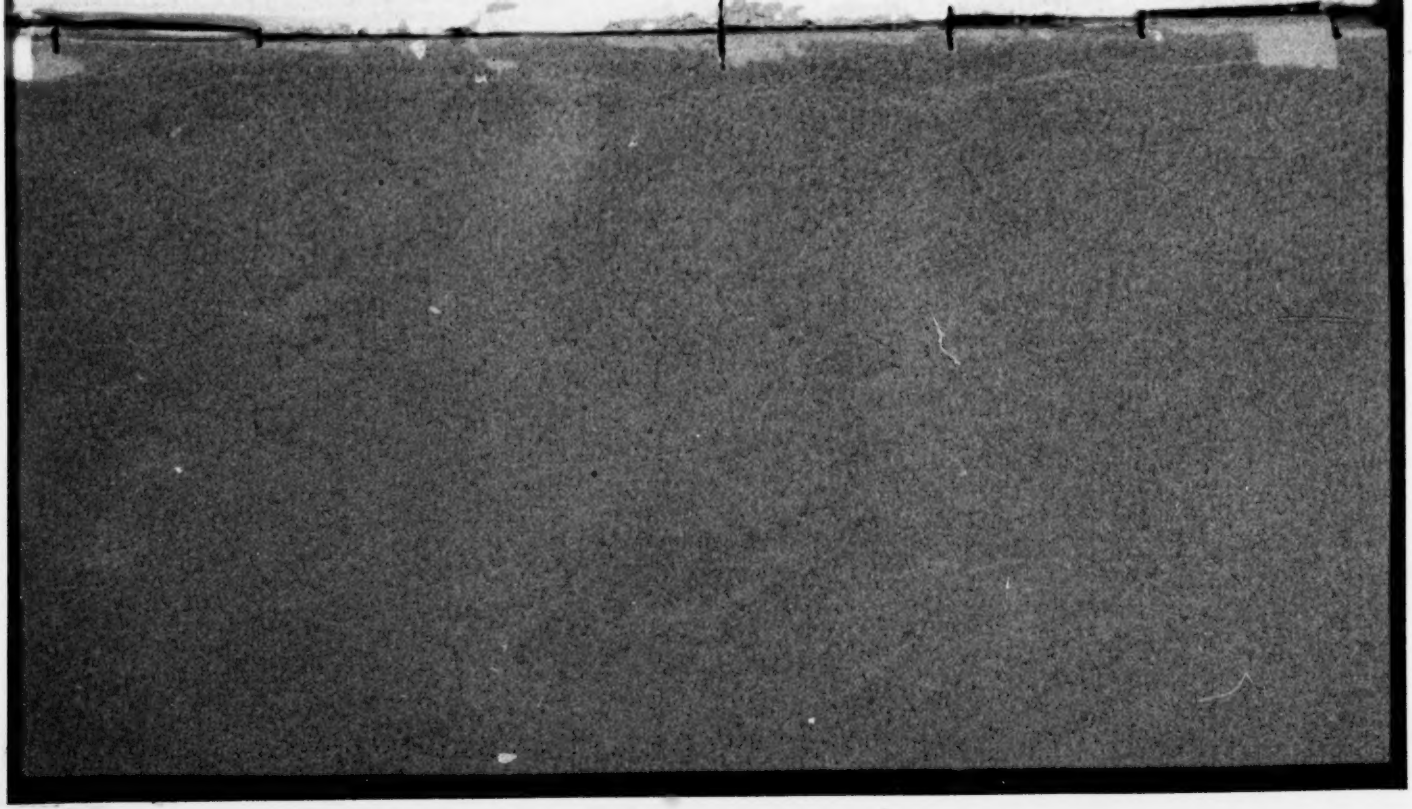
vs.

THE KANSAS AND TEXAS COAL COMPANY AND THE ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

FILED APRIL 16, 1900.

(17,722.)



(17,722.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 252

THE STATE OF ARKANSAS, APPELLANT,

vs.

THE KANSAS AND TEXAS COAL COMPANY AND THE ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 20, 1901.

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a Pleas and proceedings in the United States circuit court for the Fort Smith division of the western district of Arkansas, before the Honorable Jno. H. Rogers, judge of the district court, presiding in the United States circuit court, in the case of The State of Arkansas, plaintiff, *vs.* Kansas & Texas Coal Company & St. Louis & San Francisco Railroad Co., defendants. Complaint in equity. No. 121.

Appearances: Ben. T. Du Val, for plaintiff; Hill & Brizzolara, for Kansas & Texas Coal Co.; B. R. Davidson, for St. Louis & San Francisco Railroad Co.

1 *Transcript of Proceedings from State Court.*

In the Circuit Court of Sebastian County for the Greenwood District.

THE STATE OF ARKANSAS, Plaintiff,
vs.
KANSAS & TEXAS COAL COMPANY and Saint Louis & San Francisco Railroad Company, Defendants. } Complaint in Equity.

1. The plaintiff, The State of Arkansas, on the relation of Jo. Johnson, prosecuting attorney for the 12th judicial circuit, for her cause of action alleges:

2. That defendant Saint Louis and San Francisco Railroad Company is a corporation organized under the laws of the State of Missouri, owning and operating a railroad in the 12th judicial circuit of Arkansas, and more particularly in Sebastian county, of said circuit.

3. That defendants Kansas & Texas Coal Company is a corporation, duly organized under the laws of the State of Missouri, owning and operating a coal mine at Huntington, in the Greenwood district of Sebastian county.

4. That a high state of excitement and condition of hot blood now prevails between striking miners and their sympathizers in large numbers, on the one side, and said coal company and its employees, on the other.

5. That said coal company is threatening and is about to import into said county and town of Huntington, over the line of their co-defendant's railroad, a large number of armed men of the low and lawless type of humanity, to wit, about two hundred, to the great danger of the public peace, moral-, and good health of said county, and more particularly of said town.

6. That said threatened action on the part of said defendant, if permitted to be executed, would become a great public nuisance and would destroy the peace, morals, and good health of said county and town, — would lead to riot, bloodshed, and to the dissemination of contagious and infectious diseases.

2 7. That said county and town of Huntington are now enjoying peace, health, and good order, and your relator be-

lieves that the loss of human life and untold expenses to the taxpayers of said county on account of probable violation of the criminal laws can and should be prevented by the power of the law.

8. Wherefore your relator prays:

1. That the defendant Kansas & Texas Coal Company, its agents, servants, and employees, and each of them, be restrained and prohibited from importing or causing to be imported or brought into Sebastian county or the 12th judicial circuit of Arkansas, and that the Saint Louis and San Francisco Railroad Company, its agents, servants, and employees—each, both, and all of them—be enjoined, restrained, and prohibited from importing, hauling, or bringing, or causing to be imported, hauled, or brought, in the said county or circuit, and from unloading or attempting to unload from any of its cars in said county or circuit any and all large bodies of armed, lawless, or riotous persons or persons affected with contagious or infectious diseases that might endanger the peace, good order, or good health of the State, or create a public nuisance in said county or circuit, under the pains and penalty of the law;

2nd. That a temporary restraining order be issued; and that—

3rd. Upon final hearing said restraining order be made perpetual, and that the State have and recover her costs.

JO. JOHNSON,
Prosecuting Attorney.

Jo. Johnson, being sworn, says that statements of the foregoing complaint are true as he is informed and believes.

JO. JOHNSON.

Subscribed an sworn to before me this April 23, 1899.

STYLES T. ROWE,
Judge 12th Judicial Circuit.

Jo. Johnson, being sworn on behalf of the State of Arkansas, says: That the matters and things complained of herein, with their calamitous consequences, may ensue and the remedy herein sought come too late if he be not permitted to file this complaint or the clerk be not ordered to issue thereon or the sheriff fail to execute the same on this Sunday, April 23, 1899.

JO. JOHNSON.

10. Subscribed and sworn to before me this April 23, 1899.

STYLES T. ROWE,
Circuit Judge.

11. Ordered that the complaint be filed, that the clerk issue proper process, and that the sheriff execute same immediately.

STYLES T. ROWE,
Judge 12th Judicial Circuit.

Filed April 23, 1899.

J. P. DURDEN, *Clerk*,
By R. O. DURDEN, *D. C.*

3 *Summons in Action by Equitable Proceedings.*

The State of Arkansas to the sheriff of Sebastian county, Greeting:

You are commanded to summon Kansas and Texas Coal Company and Saint Louis and San Francisco Railroad Company and deliver to each of them the certified copy of restraining order hereto attached, to answer in 20 days after the service of this summons upon them a complaint in equity filed against them in the Greenwood district of Sebastian circuit court by the State of Arkansas, and warn them that upon their failure to answer the complaint will be taken for confessed; and you will make due return of the summons on the 1st day of the next September term of said court.

[SEAL.] Witness my hand and seal of said court this 23 day of April, 1899.

Original.

J. P. DURDEN, *Clerk*,
By R. O. DURDEN, *D. C.*

(Endorsed:) Original. Summons in action by equitable proceedings. In the circuit court, Sebastian county. State of Arkansas *vs.* Kansas & Texas Coal Company *et al.*

STATE OF ARKANSAS, } ss:
County of Sebastian, }

I have, this 23rd day of April, A. D. 1899, duly served the within by delivering a copy of the same to each of the within-named J. H. Hudnutt, agent, at Jenson, as therein commanded, and Bennett Brown, at Huntington.

Fees.

Service	$1.00
Mileage, 36	3.60
Total	4.60

GEO. T. HARRELL, *Sheriff.*

Returned and filed the 26th day of April, A. D. 1899.
J. P. DURDEN, *Clerk.*

4 At Chambers, April 23, 1899.

STATE OF ARKANSAS, } ss:
Greenwood District, Sebastian County, }

To The Kansas & Texas Coal Company and The St. Louis and San Francisco Railroad Company; the State of Arkansas to the sheriff of Sebastian county, Greeting:

You, the said defendants, are hereby notified and warned that The State of Arkansas, plaintiff, has this day duly obtained an order of injunction in an action, pending in the Sebastian circuit court for

the Greenwood district, wherein said State is plaintiff and The Kansas & Texas Coal Company and The St. Louis & San Francisco Railroad Company are defendants. This is therefore to command you, and you are hereby commanded, together with all your agents, servants, and employees and each of them, — be, and are hereby, restrained and prohibited from importing or causing to be imported or brought into Sebastian county or the 12th judicial circuit of Arkansas, and that The St. Louis & San Francisco Railroad Co., its agents, servants, and employees and each of them, be, and they are hereby, enjoined, restrained, and prohibited from importing, hauling, bringing, or causing to be imported, hauled, or brought into said county or district and from unloading or attempting to unload from any of its cars in said county or district any and all bodies of armed, lawless, or riotous persons or persons affected with contagious or infectious diseases that will or might in any way endanger the peace and good order, morals or health of the State, or create a public nuisance in any locality in said county. This order you will in nowise omit to strictly observe and obey under the penalty of the law. The clerk of this court is ordered to incorporate this order in the summons issued on the filing of the complaint in this cause, and the sheriff of this county is hereby empowered to do and perform all things lawful to be done, to the end that a strict enforcement of this order shall in all things be had and enforced, and to make due return of this writ.

STYLES T. ROWE,
Judge 12th Judicial Circuit.

STATE OF ARKANSAS, }
County of Sebastian. }

I, J. P. Durden, clerk of the circuit court of Sebastian county for the Greenwood district, do hereby certify that the foregoing is a full and complete copy of the original writ herein.

Given under my hand this April 23rd, 1899.

[SEAL.]

J. P. DURDEN, *Clerk*,
By R. O. DURDEN, *D. C.*

5 COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes Geo. Simmons and W. W. McCracken and state that shortly after the car of negroes were brought in by the Kansas and Texas Coal Company during the present strike we were each of us in the engine-room at shaft of mine 53 and saw a negro cleaning or preparing to clean up some repeating rifles, and there was in one stack along the wall about ten of the guns. From what we saw we were led to believe that the Kansas and Texas Coal Co. were arming up their imported negroes. We each of us further state that we know of no arms being carried previous to the importation of negroes by the Kansas and Texas Coal Co.

GEO. SIMMONS.
W. W. McCRACKEN.

Subscribed and sworn to before me the 26th day of April, 1899.
[SEAL.] JNO. C. KENDALL,
Notary Public.

My commission expires Mar. 7, 1900.

6 COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes J. N. Ferguson and states that on last Saturday he was in the camp of negro miners recently imported by the Kansas and Texas Coal Company and saw as much as fifteen guns, with which said negroes had been supplied by said company. Some threats were indulged in, such as *is* calculated to create disturbance. I consider the importation and arming of negroes by said Kansas and Texas Coal Company a menace to the peace of this community and calculated to result seriously if not stopped.

J. N. FERGUSON.

Subscribed and sworn to before me this 26th day of April, 1899.
[SEAL.] JNO. C. KENDALL,
Notary Public.

My commission expires Mar. 7, 1900.

COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Tp. }

Comes W. J. Clifft, justice of the peace of Diamond tp., county and State aforesaid, and states that on or about 11th day of April, 1899, one Pete Osswyr, an employee of the K. T. Coal Company, was tried in his court, and that in his presence A. B. Brown, superintendent of the K. T. Coal Company, told said Pete Osswyr to get him a butcher knofe and carry in his hand or get a pistol, but do not carry under your clothes, or I, "Brown," will get you a cannon if you can carry it on your shoulder.

W. J. CLIFFT, *J. P.*

Subscribed and sworn to before me this 25th day of April, 1899.
[SEAL.] JNO. C. KENDALL,
Notary Public.

My commission expires Mar. 7, 1900.

7 COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Tp. }

Comes A. J. Burk and states that he has interviewed James Brown, constable of Diamond township, also Dan. Hogan, attorney-at-law of Huntington, and they state that they were both present at a certain trial of one Pete Zrossig, a Swede, who is now in employ of the K. and T. Coal Co., and was then on 11th day of April, 1899, being tried for carrying a knife, and that said Dan. Hogan and James Brown say they heard A. B. Brown, superintendent of the K. T. Coal Co., tell said Pete Zrossig that if he wanted to carry arms to carry a Winchester, shotgun, or cannon, if he could get it on his

back, and to shoot the first man that interfered with him. Hogan and Brown say this statement was made in the presence of Esq. J. W. Clifft, Robert Boyd, State mine inspector, and others, but they refused to make affidavit for fear of being accused of taking sides in the strike controversy. I, A. J. Burk, further state that there has been no violence nor damage done to the Kansas & Texas Coal Company's property, nor that of the Prairie Creek Company, and that there is no probability of any serious trouble except the same is caused by the coal company importing negroes or foreign laborers, which will almost certainly result in bloodshed.

A. J. BURK.

Subscribed and sworn to before me this 25th day of April, 1899.

[SEAL.] JNO. C. KENDALL,
Notary Public.

My commission expires May 7, 1900.

COUNTY OF SEBASTIAN, }
States of Arkansas, Diamond Township. }

Comes Sol. Lodge and states that on last Saturday night he saw A. B. Brown, superintendent of the K. T. Coal Company, and the cashier of the same together with two other men, going west in the direction of the camps where the K. T. Coal Co. have the imported negroes, and were carrying guns, and said Sol. Lodge further states that he considers the conduct of said K. T. Coal Company, together with the importation and arming of negroes, a menace to
8 this community; said Sol. Lodge further states that on Friday evening he saw a box of guns on the platform of the depot in Huntington; that on the same evening he saw Red Elea, teamster of the K. T. Coal Co., and some one else take said box of guns and go in the direction of the camps of imported miners with same; that from what he saw he considered that the officers of the K. T. Coal Co. are arming the imported negroes for the purpose of enabling them to commit deeds of violence.

SOL. LODGE.

Subscribed and sworn to before me this 26th day of April, 1899.

[SEAL.] JNO. C. KENDALL,
Notary Public.

My commission expires Mar. 7, 1900.

COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes Wm. Denny, Geo. Simmons, W. W. McCracken, T. F. Martin, Geo. Bunch and states Geo. Numney, recent night watch for the K. and T. Coal Co., since negroes were imported, stated in their presence respectively that he was carrying arms, and that other employees of said K. T. Coal Co. were carrying arms, and further gave

us to understand that the imported negroes and employees of the company were armed and prepared for trouble.

WM. DENNY.
W. W. McCRACKEN.
GEO. SIMMONS.
T. F. MARTIN.
GEO. BUNCH.

Subscribed and sworn to before me this 25th day of April, 1899.
JNO. C. KENDALL.

COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes O. T. Looper, Will McKowen, Jake Richie, and W. F. Williams, and each state respectively that since the car of negroes has been shipped in by the Kansas and Texas Coal Company they have seen employees of the K. T. Coal Co. go toward shaft 53 with arms, and the employees of the K. T. Coal Company have acted in such manner as is calculated to arouse the citizens, and especially the miners, to commit deeds of violence.

O. T. LOOPER.
WILLIE McKOWEN.
JAKE PITCHIE.
W. F. WILLIAMS.

Subscribed and sworn to before me this 25th day of April, 1899.
[SEAL.] ——— ———,
Notary Public.

My commission expires Mar. 7, 1900.

9 COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes Geo. A. Hutchenson and states that on the night of the 24th day of April, 1899, while going home from town about 9 o'clock he was held up by an armed guard of the K. T. Coal Co., who represented that he was an officer. He enquired where I was going; he presented his gun, but did not point it directly at me.

I further state that I know of no striking miners carrying arms.

GEO. A. HUTCHENSON.

Subscribed and sworn to before me this the 25th day of April, 1899.
[SEAL.] JNO. C. KENDALL,
Notary Public.

My commission expires Mar. 7, 1900.

COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes S. J. Jackson and states that on last Saturday he visited the car where the imported miners stay; also that he was out there

yesterday; that on his first trip he saw guns in the car, and that on yesterday he saw armed guards, who had on pistols and told me I had better stop out there; these guards are new men, only recently employed since miners were imported.

S. J. JACKSON.

Subscribed and sworn to before me this 26th day of April, 1899.
[SEAL.] JNO. C KENDALL,
Notary Public.

My commission expires Mar. 7, 1900.

10 COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes J. N. Roberts and states that on last Saturday morning he had started to Geo. Robinson's and was walking up the switch railway and came to a trestle and was going to cross it and was stopped by A. B. Brown, superintendent of the K. T. Coal Company, who told him not to cross. I first thought he was joking, and told him I was going to cross. He told me if I undertook to go by he would kick me off in the creek, so I turned back. This was before any injunction notices were posted. I had been in habit of traveling that way. Mr. Brown told me that union men had no business on that side of the creek. His conduct was very rude and insulting.

J. N. ROBERTS.

Subscribed and sworn to before me this 26th day of April, 1899.
[SEAL.] T. C. MILLER,
Notary Public.

Commission expires Oct. 31st, 1899.

COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes J. K. Davis and states that on last Saturday he and his wife were out fishing and were near the K. T. trestle works that connects shafts No. 45 with 53. Superintendent A. B. Brown, of the K. T. Coal Co., was there. He asked me where I was going and if I was going to cross the creek. I told him I was not, and he told me that I would not be allowed to cross; that the union men had no business on the company's property on the other side of the creek. This was before there was any injunction notices posted. He appeared to talk crabbed and was in an ill humor.

J. K. DAVIS.

Subscribed and sworn to before me this 26th day of April, 1899.
[SEAL.] T. C. MILLER,
Notary Public.

Commission expires Oct. 31st, 1899.

11 COUNTY OF SEBASTIAN, }
State of Arkansas, Diamond Township. }

Comes John J. Beggs and states that he was present on or about 11th day of April, 1899, at or near the office of A. B. Brown, superintendent of the K. T. Coal Co., and heard the said A. B. Brown tell one Pete Ozsinger not to carry any concealed weapons; that he would furnish him a cannon, if he wanted it, and if any one molested or insulted him to kill them. Brown appeared to be angry. I further state that there was no trouble of any consequence previous to the importation of negroes by K. T. Coal Co.

JOHN J. BEGGS.

Subscribed and sworn to before me this 26th day of April, 1899.

JNO. C. KENDALL,
Notary Public.

My commission expires Mar. 7, 1900.

County clerk or other officers knowing facts, Tailorville, Ill.:

What was expense of your county and loss of life of Pana strike? Answer quick. Sign officially.

JO. JOHNSON,
Prosecuting Attorney.

County clerk or other officers knowing facts, Carlonville, Ill.:

What was expense of your county and loss of life of Virden strike? Answer quick. Sign officially.

JO. JOHNSON,
Prosecuting Attorney.

Governor John R. Tanner, Springfield, Ill.:

What was State expense and loss of life in Pana and Virden strikes? Answer quick.

JO. JOHNSON,
Prosecuting Attorney.

12 STATE OF ARKANSAS, }
County of Sebastian. }

W. C. Hardester, being first sworn, states:

W. C. Hardester; age, 30 years; cashier for Kansas and Texas Coal Co., Huntington, Ark.; says that he was present during a conversation between Bennett Brown and Peter Zrossig, in which said Bennett Brown told Peter Zrossig that the laws of the State of Arkansas forbid a person from carrying concealed weapons, but he had a perfect right to carry a gun, revolver, or a cannon, provided it was not concealed. The said Bennett Brown further told him that he would advise him to do so and shoot the first man that assaulted him, provided it was in self-defense.

W. C. HARDESTER.

Subscribed and sworn to before me this 26th day of April, 1899.

W. H. HILE, *J. P.*

13 Received at 5, Lr. Ax. R'y; 20, collect.

CARLINVILLE, ILLS., *Apr.* 27, 1899.

Joe Johnson, prosecuting attorney, Fort Smith, Ark.:

Loss of life Verden strike sixteen, wounded 27; cost the county and State at least ten thousand dollars.

O. C. HARTLEY,
County Clerk.

8.50 a. m.

Received at 16, Lr. Ax. R'y; 18, paid.

STATE HOUSE,
SPRINGFIELD, ILLS., *Apr.* 29, 1899.

Jo. Johnson, Fort Smith, Ark.:

Lost to State of Pana and Verden strikes, about one hundred thousand dollars; loss of life, 19.

JOHN R. TANNER, *Governor.*

11.05 a. m.

Endorsed on back: Filed 5, 6, 1899. J. P. Durden, clerk, by R. O. Durden, D. C.

14 *Bond for Removal.*

Know all men by these presents that we, Kansas & Texas Coal Company and St. Louis & San Francisco R. R. Co., as principals, and James Brizzolara & Jno. Vaile, as sureties, are held and firmly bound unto the State of Arkansas at relation of Jo. Johnson in the penal sum of one thousand ($1,000) dollars; for the payment whereof, well and truly to be made, unto the said State of Arkansas at relation of Jo. Johnson, its successors, heirs, and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents.

Conditioned, however, that the said Kansas & Texas Coal Co. and the Saint Louis — San Francisco R. R. Co. having petitioned the circuit court of Sebastian county, Greenwood district, Arkansas, for the removal of a certain cause therein pending, wherein The State of Arkansas is plaintiff and Kansas & Texas Coal Co. & St. Louis & San Francisco R. R. Co. are defendants, to the circuit court of the United States in and for the Fort Smith division of the western district of Arkansas:

Now, if the said Kansas & Texas Coal Co. and St. Louis & San Francisco R. R. Co. shall enter in the said circuit court of the United States on the first day of the next session a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then

this obligation to be void; otherwise to remain in full force and virtue.

As witness our hands and seals on this 10th day of July, 1899.

KANSAS & TEXAS COAL CO., [SEAL.]
By JAMES BRIZZOLARA, *Its Att'y.* [SEAL.]
ST. LOUIS & SAN FRANCISCO R. R. CO., [SEAL.]
By JAMES BRIZZOLARA, *Its Att'y.*
JAMES BRIZZOLARA. [SEAL.]
JNO. VAILE.

STATE OF ARKANSAS, }
County of Sebastian, } ss:

I, James Brizzolara, of said Sebastian county, the surety named in the foregoing bond, being duly sworn, say that I am a resident of the State of Arkansas and a property-holder therein; that I am worth the sum of five hundred dollars over and above all my
15 just debts and liabilities and exclusive of property by law exempt from execution; that I have property in the State of Arkansas liable to execution of the value of more than five hundred dollars, and that I know Jno. Vaile is worth in the State of Arkansas, exclusive of exemptions, the sum of five hundred dollars.

Subscribed and sworn to before me this 11th day of July, 1899.

JAMES BRIZZOLARA.

As witness my hand and official seal this 11th day of July, 1899.

[SEAL.] J. P. DURDEN, *Clerk.*

Endorsed on back: Bond for removal. State of Arkansas *vs.* Kansas & Texas Coal Co. *et al.* Filed in open court July 18, 1899. J. P. Durden, clerk.

16 STATE OF ARKANSAS, }
County of Sebastian. }

In the Circuit Court of Sebastian County, Greenwood District.

STATE OF ARKANSAS at the Relation of Jo. Johnson, Plaintiff, *vs.* KANSAS & TEXAS COAL COMPANY & ST. Louis & San Francisco Railroad Company, Defendants.	Petition for Removal to the Federal Court.

To the honorable circuit court of Sebastian county, Greenwood district, State of Arkansas:

Your petitioners respectfully show that they are the defendants in the above-entitled cause; that they are non-residents of the State in which said suit is brought, to wit, the State of Arkansas; that the Kansas & Texas Coal Company is a corporation duly organized and incorporated under the laws of the State of Missouri and a resi-

dent and citizen of the State of Missouri; that the defendant The St. Louis & San Francisco Railroad Co. is a corporation duly organized and incorporated under the laws of the State of Missouri, — a resident and citizen of the State of Missouri.

That Jo. Johnson, the relator herein, is and was at the time of the bringing of the aforesaid suit a resident and citizen of the State of Arkansas and of the western district of Arkansas, Fort Smith division, and that the matter and amount in dispute in the said suit exceeds, exclusive of interest and cost, the sum or value of $2,000.

That the said suit is of a civil nature, being a suit in equity seeking to enjoin defendants from importing or causing to be imported or brought into Sebastian county or the 12th judicial circuit of Arkansas, and that the said defendant railway company, its agents, servants, and employees, each and every one of them, be enjoined, restrained, and prohibited from importing, hauling, or bringing from or causing to be imported *all* or brought into the said county
of Sebastian or circuit, and from unloading or attempting to
17 unload from any of its cars in said county of Sebastian or circuit any and all large bodies of armed, lawless, or riotous person or persons infected with contagious or infectious diseases that might endanger the peace, good order, and good health of the State or create a public nuisance in said county or circuit.

That the controversy in the said suit is wholly between citizens of different States, to wit, between your said petitioners, who aver that they were at the time of bringing of this suit and still are citizens of the State of Missouri, and the said plaintiff, who, as your petitioner avers, was then and still is a citizen of the State of Arkansas.

That said suit is one arising under the Constitution and laws of the United States, in this, to wit, that petitioner The Kansas & Texas Coal Company is engaged in the business of mining coal in the State of Arkansas and transporting and selling the same therefrom, as a business, in the State of Texas, Kansas, and Missouri, and is thereby engaged in interstate commerce.

That petitioner St. Louis & San Francisco R. R. Co. is a common carrier and engaged in carrying passengers and freight through and from the States of Arkansas, Texas, Missouri, Kansas, and the Indian Territory and Oklahoma Territory, and thereby engaged in interstate commerce.

That petitioners are instruments of interstate commerce, and that for the purpose of such commerce and under the interstate commerce clause, of the Constitution of the United States and the laws passed in pursuance thereof they have the power and right each to conduct its said respective business, and to operate said mines and transport and sell coal and transport passengers and freight free and untrammeled from any restraints and conditions sought to be imposed upon them in this action.

That this action was brought to restrain and enjoin the defendant Kansas & Texas Coal Company from working its mines in the State of Arkansas, and the St. Louis & San Francisco R. R. Co. from acting as a common carrier and transporting passengers and freight, and the said action is an attempt on the part of plaintiff to interfere

with and restrain petitioners from carrying on their business aforesaid, and said action is in restraint of and an abridgement
18 upon the rights and immunities under the interstate commerce laws of the United States and in violation thereof, and that said action creates a substantial and serious burden upon interstate commerce.

That said suit is one arising under the Constitution and laws of the United States, and that petitioners have a defense thereto arising under the laws of the United States, and that therefore, although the State of Arkansas is a party thereto as plaintiff at the relation of Jo. Johnson, that under the laws of the United States the same, for the reason aforesaid, is removable to the circuit court of the United States for the western district of Arkansas, Fort Smith division.

Your petitioners herewith present a good and sufficient bond, as provided by the statute in such cases, that they will, on or before the 1st day of the next ensuing session of the United States circuit court for the western district of Arkansas, Ft. Smith division, file therein a transcript of the record of this action, and for the payment of all costs which may be awarded by the said court if the said circuit court shall hold that this suit is wrongfully or improperly removed thereto.

Your petitioners therefore pray that this court proceed no further herein except to make the order of removal as required by law, and to accept the bond presented herewith and direct a transcript of the record herein to be made for said court, as provided by law; and, as in duty bound, your petitioners will ever pray.

KANSAS & TEXAS COAL CO.,
ST. LOUIS & SAN FRANCISCO R. R. CO.,
By their attorneys, B. R. DAVIDSON & HILL & BRIZZOLARA.

STATE OF ARKANSAS, }
County of Sebastian. }

James Brizzolara, being first duly sworn, on oath says that he is one of the attorneys of the defendants in the above-entitled cause and of the petitioners named in the foregoing petition; that he has read the same and verily believed it to be true.

JAMES BRIZZOLARA.

Sworn to and subscribed before me this 10th day of July, 1899.
J. P. DURDEN, *Clerk.*

Filed in open court this Jul- 18, 1899.
J. P. DURDEN, *Clerk.*

Commission expires Feb. 5, 1901.

19 STATE OF ARKANSAS at the Relation of Jo. JOHNSON, Plaintiff,
vs.
KANSAS & TEXAS COAL CO. ET AL.

Record Entry.

Now, on this day, comes the defendants, The Kansas & Texas Coal Co. & The St. Louis & San Francisco Railroad Company, and present their petition & bond for removal of the aforesaid cause to the circuit court of the United States for the western district of Arkansas, Fort Smith division, which petition & bond aforesaid had heretofore — presented to this court, & in open court file the same.

1st. The court finds from the whole record that the suit is in the name of and for the State of Arkansas, and that it is the State of Arkansas against the defendants.

2nd. That the court finds from the whole record that no amount of money is involved in this suit; neither $2,000 or any other sum.

3rd. That the court finds from the whole record and the decision of the Supreme Court of the United States that there is no question arising in this suit under the Constitution and laws of the United States, which has not heretofore been decided, touching the police powers of the States, and hence — no longer a Federal question.

The court declares the law to be, in the language of the Supreme Court of the United States, that "a State court is not bound to surrender its jurisdiction of a suit or petition for removal until a case has been made which on its face shows that the petitioner has a right to the transfer; and if it decides against its removal and proceeds with the case, its ruling — reversable here (in the Supreme Court of the United States) after final judgment." That a suit between a State on the one side and citizens on the other cannot be removed on the ground of citizenship. Stone *v.* South Carolina, United States Reports, vol. 117, page 430; decided April 5, 1886.

Against an action brought under the laws — N. Y., 1875 c. 604, as amended by laws — 1885, in the name of the "shore inspector" to recover the penalty imposed by that act for depositing prohib-
20 ited materials in the waters of the bay and harbor of New York, which penalty, when recovered, goes into the State treasury, is in effect an action by the State, and therefore not removable on the ground of citizenship, under act Cong. March 3, 1887. Ferguson, shore inspector, *v.* Ross *et al.* (two cases).

(Circuit court E. D. New York, March 20, 1889) 38 Fed. Rep., 161.

Again, "a suit instituted by a State in one of its own courts against a citizen of another State is not removable on the ground of a diversity of citizenship of the parties."

State of Alabama *v.* Walffe, 18 Fed. Rep., 836.

On the question of the amount involved the law is that before a cause can be removed on this ground it must appear that the amount in controversy is not less than two hundred dollars. There is no amount whatever in this cause.

There are no questions arising under the laws of the United States

in this case which have not heretofore been settled by the Supreme Court of the United States. Section 8, Con. U. S. This clause of the Constitution does not, nor does any other, prohibit the States from passing laws to regulate and control professions, pursuits, trades, and business that fall within the definition "of the police power," such as inspection law-, quarantine laws, health laws of every description, as well as laws regulating the internal commerce of a State and those which respect turnpike roads, ferries, etc. Gibbons *v.* Ogden, 9 Wh., 203.

The "police power" is the power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable law, statutes, and ordinances, either with or without penalties, not repugnant to the constitution, as they shall judge to be for the good and welfare of the Commonwealth and of the subjects of the same. Commonwealth *v.* Alger, 7 Cush., 85 (1851), Slow, C. J.; Commonwealth *v.* Bears, 132 Mas., 546 (1882). It is the power by which the health, good order, peace, and general welfare of the community are promoted. Webber *v.* Virginia, 103 U. S., 348 (1880), Field, J.

21 The States have full power to regulate within their limits matters of internal police, including in that general designation whatever will promote the peace, comfort, convenience, and prosperity of their people.

Esconaba & Lake Michigan Transportation Co. *v.* City of Chicago, 107 U. S., 683 (1882), Field, J. Again, the power is in each State to prescribe regulations to promote the health, peace, morals, education, and good order of the people.

Barbier *v.* Connalley, 113 U. S., 31 (1885), Field, J.; Soon Hing *v.* Craulr, Jb., 703 (1885). None of the amendments to the Constitution of the United States interfere with this power. Munn *v.* Illinois, 94 U. S., 145 (1876), Field, J., Jb., 113.

Legislation which secures to all protection in their rights and the equal use and enjoyment of their property embraces an almost infinite variety of subjects. Whatever affects the peace, good order, morals, and health of the community comes within its scope, and every one must use his property subject to restriction which such legislation imposes; the police power of the State commonly interferes with the conduct of individuals in their intercourse with each other and in the use of their property, so far as may be required to secure these objects. Munn *v.* Illinois, 94 U. S., 145 (1876), Filed, J., Jb., 113. The power certainly extends to the protection of the lives, health, and property of the citizens and to the preservation of good order and the public morals.

The legislator cannot divest itself of the power to provide for these objects. They belong to that class of objects which demand the application of the maxim *solus populi superema lix*, and they are to be attained and provided for by such appropriate means as the legislature's discretion may devise. This discretion can no more be bargained *any* than the power itself. Beer Co. *v.* Massachusetts, 97 U. S., 22 (1877), Bradley, J.; Fertilizing Co. *v.* Hyde Park, Jb., 699

(1877); Justice *v.* Commonwealth, 81 Va., 212 (1885), cases; State *v.* Yopp, 97 N. C., 478, 479 in (1887).

22 The Government may, by general regulations, interdict such uses of property as would create nuisances and become dangerous to the lives, health, peace, or comfort of the citizens. Unwholesome trades, slaughter-houses, operation- offensive to the senses, the deposit of power, the application of steam power to propel cars, building with combustible materials, and the burial of the dead may be interdicted on the general and rational principle that every person ought to use his property as not to injure his neighbors, and that private interests must be made subservient to the general interests of the community. 2 Kent, 304; Mann *v.* Illinois, U. S., 146 (1876), cases.

A law passed in the legitimate exercise of this power is not obnoxious, because it does not provide compensation for inconveniences to the individual; he is rewarded by the common benefit secured. Bancroft *v.* Combridge, 126 Mass., 441 (1879), cases.

The power was not surrendered to the United States, but remains complete, unqualified, exclusive in the State. If one were to attempt to define a subject so diversified and multifarious, we would say that every law came within this description which concerns the welfare of the whole people of the State or of any individual within it, whether it related to their rights or their duties, whether it respected them as men or as citizens of the State and whether their public or private relations, whether it related to the rights of persons or of property or of the whole people of a State or of any individual within it, and whose operations were within the territorial limits of the State and upon the person- and things within its jurisdiction. State of New York *vs.* Milles, 1 Pet., 139 (1837),

Barbon, J. Within its category comes every law for the restraint and punishment of crime, health, and morals. License cases, 5 Howe, 631 (1847), Greer, J. It was not the design of the Constitution of the United States or of any of the amendments thereto to interfere with the power of the State to protect the lives, liberty, and property of its citizens or with the exercise of the power in the adjudica-

23 tion of the courts of the State in administering the process provided by the laws of the State.

Ex parte v. Converse, 137 U. S., 624; *Re* Kemmler, 136 U. S., 436. The petition for removal is denied. To which action of the court, defendants except.

Clerk's Certificate to Transcript.

(10-cent revenue stamps.)

STATE OF ARKANSAS, }
County of Sebastian, } *ss:*

I, J. P. Durden, clerk of the circuit court within and for the county and State aforesaid, do hereby certify that the annexed and foregoing pages contain a true and perfect transcript of the complaint and all other papers filed, also record entries, in the case

of The State of Arkansas *vs.* Kansas & Texas Coal Co. *et al.*, as therein set forth, Sebastian county, Arkansas.

Witness my hand and official seal this 24th day of July, 1899.

(Signed) J. P. DURDEN, *Clerk*,
By R. O. DURDEN, *D. C.*

(Endorsed on back:) Filed in my office this July 25, 1899. Thomas Boles, clerk.

24 *Notice.*

In the United States Circuit Court for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS at the Relation of Jo. JOHNSON, Plaintiff,
vs.
KANSAS & TEXAS COAL COMPANY and ST. LOUIS & SAN FRANCISCO Railroad Company, Defendants.

To Jo. Johnson, the relator in the above-styled cause and prosecuting attorney of the 12th judicial circuit:

You are hereby notified that the defendants herein have filed in the United States circuit court for the western district of Arkansas, Fort Smith division thereof, certified transcript of the record and all the pleadings and papers in the above-entitled cause, and that such case is now properly pending in said United States circuit court.

And you are hereby further notified that on Monday, the 31st day of July, 1899, at 10 o'clock a. m., or as soon thereafter as the court will hear the same, the defendants will move for a dissolution of the injunction heretofore granted herein and will at the same time and place move the court for an injunction against you, your agents, attorneys, or representatives prosecuting said action any further in the Sebastian circuit court for the Greenwood district, as the same has been properly removed to the said United States court.

Given under our hands this 25th day of July, A. D. 1899.

HILL & BRIZZOLARA,
Att'ys for D'f'ts.

I waive service of further notice in above matter, but hereby beg to suggest to the court that on Monday, July 31, I may be held by the circuit court at Greenwood, and that I will be held in circuit court at Waldron on first Monday and probably second Monday in September, but could appear in within-mentioned matter on September 3rd, Monday.

JO. JOHNSON, *Pros. Att'y.*

25 July, 1899.

(Endorsed on back:) Filed July 28th. Thomas Boles, clerk of the court.

25 STATE OF ARKANSAS, }
County of Sebastian. }

In the Circuit Court of Sebastian County for the Fort Smith District.

STATE OF ARKANSAS *ex Rel.* JO. JOHNSON, Prosecuting Attorney, }
vs. }
KANSAS & TEXAS COAL COMPANY and ST. LOUIS & SAN FRANCISCO Railroad Company. }

Transcript of the Testimony of Bennett Brown.

Before his honor Styles T. Rowe.

Appearances: For the State, Jo. Johnson, prosecuting attorney; John S. Little, Edgar E. Bryant, and Ben. T. Du Val. For the K. & T. Coal Co., Messrs. Hill & Brizzolara. For the St. L. & S. F. R. R. Co., B. R. Davidson.

April 27, 1899.

26 BENNETT BROWN, having been duly sworn upon behalf of the Kansas & Texas Coal Company, was examined in chief by Mr. Joseph M. Hill, and testified as follows, to wit:

Question. What is your position with the Kansas & Texas Coal Co.?

Answer. Local superintendent of the company at Huntington.

Q. How long have you occupied that position?

A. Two years.

Q. When did you commence?

A. The last day of February.

Q. How many men did you have working in the mines at Huntington at that time?

A. About four hundred, as near as I can judge now.

Q. What is the full capacity of your mines? How many men will you work if you are running pretty fully?

A. About 500 men at that time.

Q. The strike has been on, then, since the first of March?

A. Yes, sir.

Q. How many men have continued to work for you since that time?

A. We have had in the mines at various times since the first of March about 50 men.

Q. At any one time?

A. No, sir; not at any one time. We have never had more than 17 or 18 men at any one time.

Q. That has been as many as you could keep at any one time in the mines?

A. Yes, sir.

Q. Has your company been ready since the first of March to permit those miners that have quit you to go back to work?

A. Yes, sir; at all times.

27 Q. They have refused, or, rather, failed to do so?
A. Failed to do so.
Q. Have you attempted to get miners from other places to take their places?
A. We have.
Q. How many of those miners that were working for you the first of March, or, rather, the last of February, are there in Huntington now or that immediate vicinity?
A. Not more than 200.
Q. What has become of the other two hundred?
A. I do not know what has become of them.
Q. They have all left those parts, have they?
A. Yes, sir.
Q. There is not, then, over two hundred miners there, you think?
A. Not that were in our employment previous to the strike.
Q. Then it would become necessary in any event for you to increase your force two or three hundred any way you take it, would it not, even if they all went back to work?
A. Yes; that are there now; yes, sir.
Q. If the other mines around there were running, could you get miners for yourself without importing them?
A. Not unless they come in freely, voluntarily, and of their own accord.
Q. From other places, you mean?
A. Yes, sir.
Q. If the other mines down in Sebastian county were running it would be necessary to import labor or labor to voluntarily come in from a distance?
A. Yes, sir.
Q. At least two or three hundred?
A. Yes, sir; at least two or three hundred at Huntington.
Q. The strike is on at other mines in the county under a similar conditions to yours, I believe?
A. I understand so.
Q. What efforts have you made to get any other miners and have you gotten any other miners?
28 A. The president of the company, I understand, employed an agent to go into other fields and engage miners to go to Huntington and work, and some of those engaged have come to Huntington and are at work.
Q. When did they come?
A. I think Thursday of last week.
Q. How many were there?
A. There were sixteen.
Q. How many were white and how many were black?
A. There was one white man.
Q. The balance negroes?
A. Yes, sir.
Q. Those were *bona fide* miners, were they?
A. So far as I know; yes, sir.
Q. They are at work in the mines now?

A. They are.

Q. Did they come voluntarily?

A. There was no coercion used on the part of the company that I know of to force them in.

Q. Was the situation explained to them before they got to Huntington?

A. Yes, sir; fully.

Q. I believe you also permitted a committee from the union to interview them when they got there, did you not?

A. Yes, sir.

Q. Did they explain the situation to them?

A. I asked them if they had made a statement to these men, and they said yes. I asked them if they had said all they wanted to say, and they said they had.

Q. And the men went on to work?

A. Yes, sir.

Q. Were the men armed?

A. No, sir; not that I know of. I never saw any arms, and have no reason to believe they had any arms.

29 Q. Were there any guards with them?

A. Not one.

Q. Did the company purpose to bring in other miners under similar conditions to what they brought in those?

A. I understand they did.

Q. Do you know whether they purposed to bring them in armed?

A. No, sir; they did not.

Q. Or under guard?

A. No, sir.

Q. You had no information to that effect?

A. No, sir.

Q. You are in a position that you would know the plans of the company if such were the plans, would you not?

A. I should think so.

Q. Is it the purpose of the company to bring in *bona fide* miners to work in their mines, or is it the purpose of the company to bring in a large number of armed men of the low land lawless type of humanity?

A. Oh, undoubtedly miners to mine coal: that is what they want.

Q. Is it the purpose of the company to bring men in there infected with contagious and infectious diseases?

A. I have too much respect for my own health to stay there if they did.

Q. A man has to be pretty able-bodied man to be a miner, does he not?

A. He has to be a reasonable able-bodied man and in health to mine coal successfully.

Q. If contagious or infectious diseases would get into the mine it would be very ruinous to the prosperity of the mine, would it not?

A. That would depend entirely upon the character of the disease they possess.

Q. Break up the work in the mine, would it not?
A. Break up the organization altogether.
Q. What has been the condition of those that have been brought in—those 16 or 17?
A. Healthy.
Q. Able-bodied miners?
30 A. Yes, sir.
Q. I believe I asked you if they were armed, and you said they were not, so far as you knew?
A. Yes, sir.
Q. Is it the purpose of the Kansas & Texas Coal Co. to do anything other than to bring in men to work in their mines, taking the place of the men who refuse to work there?
A. Not to my knowledge.
Q. It is making an effort to bring in men to work its mines, as I understand?
A. Unquestionably so.
Q. Anxious to do so?
A. Yes, sir.
Q. The mines have been practically shut down since the strike commenced?
A. Practically shut down since the strike commenced.
Q. Even if all these strikers would go back to work, you would still have to bring in two or three hundred men from a distance?
A. Unless men came in there freely and voluntarily, of their own accord, we would have to.
Q. They would have to come in there from other places?
A. Yes, sir; from other States, in fact.
Q. Is there anything in the charge here—you have heard the sheriff say he had heard rumored that there were to be Pinkerton men in charge of these men. Was there anything in that?
A. I never heard of one being employed by the Kansas & Texas Coal Company to do guarding out there, or duty of any kind.
Q. These men were not coming under guard, as I understand it?
A. No, sir.
Q. They were not a mob that was going down there at all?
A. No, sir.
31 Q. Is it usual to have negroes employed in the mines of the Kansas & Texas Coal Company?
A. Yes, sir.
Q. Do they have them, as a rule, there?
A. Yes, sir; we have had colored miners in Huntington ever since I went there.
Q. A good many of these strikers are colored miners, are they not?
A. Yes, sir.
Q. Is the objection, so far as you are able to learn, to the importation of labor or is it particularly aimed to the importation of negro labor?
A. Well, it might be intensified, so far as negro labor is concerned, but still the feeling would be materially the same against

the importation of any kind of labor, white or colored, for that purpose.

Q. So far as you know, has there been any acts of lawlessness or threatened lawlessness on the part of any of these men who have continued to work for the Kansas & Texas Coal Company since the strike began?

A. Not to my personal knowledge.

Q. Have any complaints been made to you that these men—I believe you say altogether you have had about fifty at work there?

A. Yes, sir.

Q. That any of them were threatening any outbreak or threatening to attack anybody or threatening any violation of the laws at all?

A. The men there at work?

Q. Yes.

A. No, sir.

Q. There have been some threats made down there, I believe, too, but I want to know if there have been any of them, so far as you know, on the side of the laborers and the officials of the Kansas & Texas Coal Company?

A. No, sir.

Q. Could you make an approximation of the value of the plants at Huntington owned by the company—the K. & T. Company?

32 A. Not accurately.

Q. Just make a rough estimate, as near as you can, from your knowledge of the situation.

A. I should say $400,000.

Q. What is the extent of the damage, approximately, if you can state, to the company in suspending the operation of its mines, per day—what is the loss to the company, in other words?

A. That I am unable to say.

Q. Would it run up into the thousands of dollars?

A. It might, and it might not, run it to a single cent.

Mr. EDGAR E. BRYANT (of counsel for the State): It might be a profit to stop sometimes?

The WITNESS: Yes; undoubtedly it would be.

Mr. JOHN S. LITTLE (of counsel for State): The miners are helping you?

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): We will speak ordinarily. What would be the loss to the company in the situation from the first of March to the present time in the stoppage, if you can make an estimate?

A. That is incalculable. The fact of the matter is that a company, like the Kansas & Texas Coal Company, doing a large business not only lose its trade at the time it is stopped, but it loses its trade for some time after it has started to work. It is not only the immediate loss it sustains, but it is the consequential loss of not being able to fulfill its contracts by the consequences of these stoppages.

Q. The loss, then, would be quite large and quite serious?

A. I think so; yes, sir.

Q. I wish you would state to the court, in your own language, just the situation down there on last Saturday and Sunday, as you understood it.

A. The situation, as I understand it, was of perfect quietness.

Q. Was there any threatened outbreak?

A. Not to my knowledge; no, sir.

Q. Any riot and bloodshed imminent there?

A. If there was, I did not hear of it.

33 Q. You were there?

A. Yes, sir; I was there.

Q. Now, what was the condition of things when you made application to the sheriff to appoint deputies to protect the property?

A. Numerous complaints were being made to me by the men who were at work and men who had been at work that they would not work nor could not continued to work unless they had proper protection.

Q. Protection from whom?

A. Protection from the company, they said.

Q. You mean protection in their work. I mean who were these threats from?

A. They said from the miners who were on a strike.

Q. To try to prevent them from working—was that the object of it?

A. Yes, sir.

Q. What was the nature of the threats that were reported to you?

A. The character of the threats were such that they would get into trouble; they would be hurt; their houses would be blown up; that they might get hurt; that their houses would be blown up, and a general understanding was conveyed to them that they would not be safe either to go to work or to continue at work if they wanted to work; that their person would not be safe from violence and abuse.

Q. Quite a number of them quit on that account, did they not?

A. Yes, sir.

Q. When that situation developed, what did you do with regard to seeing the sheriff?

A. I told the sheriff the condition of affairs and asked him to deputize men to see that these men were protected in their right to work.

Q. Did he do so?

A. He did not.

Mr. JAMES BRIZZOLARA (of counsel for K. & T. Coal Co.): What did he say?

The WITNESS: He said he had no authority under the law to do such, and, then, he had no money to pay them, even if he had authority under the law.

34 Mr. JOS. M. HILL (of counsel for K. & T. Coal Co.): Did you offer to pay the expenses?

A. I did; yes, sir.

Q. And he still declined to appoint them?

A. He did.

Q. Did he indicate to you that if he appointed deputies there might be a row raised or a riot or anything of that kind, or that it would precipitate a riot?

A. If he made any such remark to me, I do not now remember it.

Mr. JAMES BRIZZOLARA (of counsel for K. & T. Coal Co.): Did he say to you that if he appointed deputies and the parties sent the deputies out there that they might think they were taking sides, and that there might likely have been a collision, owing to that fact?

The WITNESS: If he did so, I can't remember it.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): At any rate, the deputies were not appointed?

A. The deputies were not appointed.

Q. Mr. Herrell testified that he was about to appoint some deputies at one time and concluded not to. Did he ever notify you he was going to appoint some?

A. Yes; he told me he would.

Q. And then afterwards did not, or told you he changed his mind?

A. Afterwards told me he had changed his mind.

Q. After you had applied to the sheriff the next step, I believe, you took was an application to the Federal court for an injunction to restrain interference with the property?

A. Yes, sir.

Q. That was served Sunday, was it not?

A. The notice was served by the United States deputy marshals on Sunday—that is, the notices were posted.

Q. Posted all over the community there and served on the people personally, I suppose, later?

A. Yes, sir.

35 Q. After the service of that injunction, was everything quiet and peaceable down there, so far as you were able to observe?

A. Yes, sir.

Q. The company was purposing to go ahead and bring in those miners under the protection of the injunction?

A. I understand so.

Q. Did you hear of the message of the governor being brought to Huntington, as well as being served at Jenson, on the agent of the company there?

A. I did so.

Q. Were you notified to that same effect as to this notice here or similar?

A. Yes, sir.

Q. Who notified you of that?

A. Mr. Blanton.

Q. Deputy sheriff?

A. Yes, sir.

Q. What did he state to you?

A. He said that the colored miners would not be permitted to come into Huntington.

Q. By what authority did he say that was being done?

A. By command of the governor of the State.

Q. Did he say he was there to enforce that?

A. He was; yes, sir.

Q. When did he give you that notification?

A. About twenty or twenty-five minutes past four o'clock in the afternoon on Sunday.

Q. Did you know of any apprehensions on the part of any one in that community of any violence being done on the part of the employees of the company who were working in their mines or who were to be brought there to work in the mines?

A. I knew of none; no, sir.

Q. The entire apprehension that existed of this trouble was that it would be brought about by the striking miners, was it not?

A. Yes, sir.

36 Cross-examination.

By Mr. JOHN S. LITTLE:

Q. You said a moment ago that a number of miners had been shipped in. Where were they from?

A. They told me they were from Des Moines, Iowa.

Q. How many of them did you say came in?

A. Sixteen.

Q. They came in a body?

A. Yes, sir; came together.

Q. Nobody with them except the miners?

A. Yes, sir; the agent that secured them was with them.

Q. They came with the agent?

A. Yes, sir.

Q. They were not interrupted when they got off?

A. Not in any way, shape, or form.

Q. By any violence?

A. No, sir.

Q. Where did they take up their abode when they came?

A. At the mine.

Q. You put them at the mine?

A. Yes, sir.

Q. Built a stockade out there?

A. We put up a wire fence. You may call that a stockade, if you please.

Q. That is a great Cuba blockade. What character of wire fence?

A. Four or five wire fence, just as you would put around a field.

Q. Have you any arms out there about the mines?

A. We have.

Q. How many?

A. Well, I suppose, as near as I can guess—I don't know exactly, but as near as I can guess—we have about six Winchester guns and four shotguns, or five, and five or six revolvers.

Q. They are kept in that stockade or wire fence, as you please to call it?

A. Kept in that stockade, inside of the fence; yes, sir.

Q. Have you made or are you making arrangements for any additional arms?

37 A. Not unless it becomes necessary.

Q. I say have you up to this time made any efforts to secure additional arms?

A. We have.

Q. What success have you had?

A. In securing additional arms?

Q. Yes.

A. We can secure all we want.

Q. You have arrangements made for that. How long would it take you to get them, or have you got them now?

A. We can get them from Kansas City in 24 hours after we send in the order.

Q. You have the arrangement- ready to meet the order when it is necessary?

A. Not any arrangements made at al-.

Q. I will ask you if you have not an order out now for some guns.

A. We have none that I know of; no, sir.

Q. You don't know, then, that you are expecting a moderate supply in this evening?

A. There has been none ordered by me, and I know of no such order outstabnding.

Q. The men you have got there now at work are armed, are they not?

A. They are not.

Q. Where are the guns? You told me they were in the stockade. Who has got the guns?

A. We have.

Q. You have got the men, too, it seems—the miners?

A. Yes, sir.

Q. Who stays in the wire fence except the miners; do you?

A. I have been there myself; yes, sir.

Q. I supposed you had at some time. Do you live in the stockade?

A. No, I don't.

Q. Who does except the miners? You say the guns and pistols are in there?

A. We have no men that lives permanently in there except the miners.

Q. Are not the guns in there for the use of the miners?

A. Not for the use of the miners, but for the use of persons whom we employ to guard the mines at night; to see that they are not attacked; to see that they are kept in perfect security.

38 Q. How many men do you employ of a night?

A. Four men.

Q. You give them these Winchesters—six of them—and four shotguns and twelve or fifteen six-shooters—these four men?

A. No, sir; we don't.
Q. How do they handle all those guns?
A. I took one myself one night.
Q. You were one of the four that night?
A. No, sir; not one of the four, but one of a dozen.
Q. Was that the "peaceful night," on Sunday night?
A. That wasn't the "peaceful" night on Sunday. It was the "peaceful" night on Thursday, Friday, and Saturday.
Q. It got absolutely peaceful Sunday?
A. It was peaceful all the time.
Q. What did you want with the guns, then?
A. To keep it peaceful (laughter).
Q. By shooting the fellow that got in the way, I suppose. How long had it been before that that you applied to the sheriff for guards—before this Sunday, when it was perfectly peaceful?
A. It was the beginning of that week; just the beginning of that same week.
Q. It was prior to Sunday, was it not?
A. Yes, sir.
Q. What I want to know, if you needed guards before and needed six-shooters and shotguns, and even went out yourself to stand sentinel—if it was so troublesome Thursday, Friday, and Saturday, how did it get so peaceful Sunday?
A. I didn't say it was troublesome Thursday, Friday, or Saturday, did I?
Q. It seemed you looked for trouble. You went out there and stood all night yourself one night?
A. I told you that men told me that they would not work for me unless that I would give them a guarantee that they would work in perfect safety.
39 Q. Yes; you told me that.
A. Yes, sir.
Q. And you told the gentleman on the other side, too, did you not, that you had heard all sorts of threats about dynamiting their houses and dynamiting them, and all that sort of thing?
A. Yes, sir.
Q. Is that the perfect peace you speak of on Sunday?
A. That is the perfect peace I speak about, so far as open knowledge is concerned—so far as open action is concerned.
Q. Where had you made arrangements to get these other importations you were expecting? Were you not expecting some here on Saturday, Sunday, or Monday?
A. We were expecting some in on Monday.
Q. How many?
A. Thirty.
Q. Where from?
A. From Kentucky.
Q. Do you know what point?
A. No; I don't know what point.
Q. How were they coming?
A. They were coming in the cars.

Q. Coming in by themselves; without arms?
A. Accompanied by the agent who contracted with them.
Q. Accompanied by the single agent, you think?
A. Yes, sir.
Q. You have no knowledge whether they came prepared for their defense or not?
A. I know nothing at all about that.
Q. Can you cite me to an instance of any of these conflicts in the country, wherever a car-load of miners went into a town on a strike—where they were expecting a conflict and bloodshed—they would go in there without arms or without guards? Was that the case at Virden or Pana, or anywhere else?
A. So far as newspaper reports were concerned, it wasn't the case, but I do not know of my own knowledge whether it was the case or not.
40 Q. I think we can probably accept that as history. It was the fact. I never heard it disputed. Do you undertake to say now that these miners were unarmed, without guards, without any protection, would run their heads out here in the fire with no means of defending themselves? Is that your idea about it—that they would come in without arms or anything?
A. I say they did. What they have done they certainly can do.
Q. You got sixteen?
A. Thirty is only twice that many.
Q. Did you have a car-load? Did they occupy a single car?
A. I don't know.
Q. Where are they now?
A. They were diverted by the company elsewhere.
Q. Do you mean put to work at other places?
A. Yes, sir.
Q. Have you any additional arrangements for shipping in others into these mines here?
A. None at present, that I know of.
Q. I do not care to go too deep into the intentions of your company, but is it not a fact that you warned your company that their very conduct would create trouble and bloodshed out here—that the shipping in of negroes into the mines out here would create bloodshed and trouble, and didn't you recommend that the company not do it?
A. Have I to answer that question?

Mr. Jos. M. Hill (of counsel for K. & T. Coal Co.): If the court please, I would have been glad for him to have answered it if the prosecuting attorney would have given his information this morning. I think it is exactly the same class of testimony that we sought. If the court had permitted us to have gone into the question of information derived from others, probably governing the actions in the matter, I would not have objected to this question and would have thought that Mr. Brown ought to have answered, but, under the rules of the court, I submit that it is immaterial.

41 The COURT: I think there is a big difference in it. The prosecuting attorney was not on the ground, and he is not the manager of the company, and here is Mr. Brown, that was on the ground and managing the company's affairs. He knows the situation.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): He is manager of the local affairs.

The COURT: I think he will have to answer that question.

Mr. B. R. DAVIDSON (for St. L. & S. F. R. R. Co.): There is one other objection I would like to make. Is there no difference between a man protecting his property and a man threatening violence on that man for protecting his property? If a man is placed in the position that this gentleman is here, the superintendent of valuable property, as the proof shows here, being of the value of four hundred thousand dollars, and men seeking to create a disturbance; and for what? Simply because he wants to hire somebody else. Are the secret communications between the agent and the employer to be gone into by a court here? They are not admissable according to any of the rules of evidence. He was there in charge of the company. The communications between him and his employer were privileged communications. He was acting in a lawful manner; simply giving his opinion, that they are attempting to go into now, as to what the effect of doing this in a lawful manner would be upon the minds of men that are violating the law. It is not admissable under any rule of evidence.

The COURT: I think it is clearly admissable. The district attorney had no personal knowledge of anything, and he told you so, and Mr. Brown was on the ground there, and of course the situation as it existed is what the court wants to know. I don't see how that can hurt him.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): What time was your question to have reference to?

Mr. JOHN S. LITTLE (of counsel for the State): Pending the shipment of these parties. I don't know what hour it was or what date.

(Stenographer reads question.)

42 Mr. B. R. DAVIDSON (counsel for St. L. & S. F. R. R. Co.): Does the court hold that what he recommended or what he communicated to his company is legitimate evidence?

The COURT: That might have some bearing upon it.

Mr. JOHN S. LITTLE (of counsel for State): He is virtually one of the parties to the suit.

The COURT: The Kansas & Texas Coal Company cannot speak except through its employees or manager.

The WITNESS: I wrote my company, advising that no men be shipped in here at the present; that I thought there was a probability of the strike being closed without any resort to those methods if our people would be allowed to work and get the proper protection from the State authorities to enable them to work without fear of violance; that we had some men in the mines now, and if they would be allowed to work peac-ably others would follow, and I would advise the president of the company, at the present time at least, not

to insist on sending in foreign labor; but I did not not say that it would cause riot and bloodshed, but I believe I did say that there might be trouble, and I wanted them to take such action that if his property was damaged by a riot through the State authorities not taking the proper course to protect it, that he might be enabled to to sue the country or the State in the courts and get damages for property destroyed by riot and violence.

Mr. JOHN S. LITTLE (of counsel for the State): You haven't quite answered the question yet. Was it not your opinion at that time—at the time you wrote these letters, whether you expressed it or not to that effect—that the importation of these foreign laborers would create trouble and bloodshed? Was that your opinion at that time?

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): We object to that on the additional ground that he is asking for a matter of opinion. Anything that Mr. Brown may know of the facts he has a right to answer, but when you come to calling for a man's opinion that is going a little too far.

The court must draw these conclusions and not the witness. We object.

43 The COURT: I think, in this kind of a case—I think a man in the position of Mr. Brown, the position he occupied there, the manager of the company, his knowledge of the situation and the people and everything gives him a right. I would like to hear his opinion anyhow.

Mr. JOHN S. LITTLE (of counsel for t-e State): Let us have it.

The WITNESS: It was my opinion that unless there was a sufficient manifestation of force to protect men from any attack that might be made upon them, that there would be trouble. That was my opinion, expressed to Sheriff Harrell.

Q. I want to ask you this: whether or not you know that it was the purpose of the company in shipping into that mine negroes that it was done for the purpose of humiliating the miners and driving them to resent.

A. It was not.

Q. Not within your knowledge, to say the least of it?

A. It was for the purpose of getting coal out to fill our contracts. That is what it was for.

Q. So far as you know, that was the purpose?

A. There was no humiliation intended to anybody.

Q. You didn't think it would help settle the strike by putting them in? Up to the serving of the Federal court's injunction upon the miners, had they destroyed any of the company's property or anything of that sort?

A. Not a dollar's worth.

Q. The strike had been going on ever since February, I believe you say—the first?

A. Yes, sir.

Q. There had been no damage to property?

A. Not a dollar.

The PROSECUTING ATTORNEY: Do you mean February first or last?

The WITNESS: The last day of February.

Mr. JOHN S. LITTLE (of counsel for State): That was my mistake; and so all your guarding and all that sort of business was anticipatory. You were anticipating it would produce trouble when you brought these people in?

44 A. It was for the purpose of preventing trouble.

Q. Sort of a bond to keep the peace?

A. You can construe it that way if you choose.

Q. I am just liable to choose to do it.

A. We understand each other, Judge, first rate. You understand these things just as well as I do.

Q. Certainly I do.

Redirect examination.

By Mr. Jos. M. HILL:

Q. They have asked you some opinions, and I think you will probably aid the court with some others. If the sheriff had sent some guards over there at the time you asked for it, what would, in your opinion, have been the effect on the situation?

A. The effect on the situation would have been that the men at work would have continued at work and other men would have gone to work.

Q. In other words, it would have about broken up the strike, would it not?

A. That was my opinion.

Q. What, in your opinion, was the effect of the service of the injunction of the Federal court there on Sunday?

A. My opinion of the serving of the injunction of the Federal court on Sunday was that it would demonstrate to the men who were down there that the property was under the protection of the Federal Government, and also the men who were shipped in, and that it would have a deterring effect upon trouble that might be contemplated; that is my opinion.

Q. Would it tend to end the strike, so that these miners could go back into the mines and go to work, in your opinion?

A. It certainly would have that tendency, because, as I said before, if the men felt *felt* assured of perfect security, they would resume work, I am told—a number of them.

Q. And you think that injunction of the Federal court tended to assure them they would have protection, and a gre-t many men would have gone back to work?

45 A. That is my opinion.

Q. Did you have information that there was a great many, or quite a number, of these strikers there that wanted to go to work if they were afforded ample protection in doing so?

A. I had; yes, sir.

Q. What, in your opinion, was the effect of the message received

from the governor, through the hands of Deputy Sheriff Blanton, on Sunday evening, as affecting the peace of the situation?

A. It had just *the* exactly the opposite effect from the serving of the notice of the injunction of the Federal court. It had the tendency to encourage the men to remain out on the strike, because they felt they had the support of the State authorities, and that the State authorities by their action would prevent any men from coming in to mine coal, and so increase the necessities of the company, and consequently the effects be to put the men that were there to work.

Q. Now, in regard to the facts. Judge Little has asked you about the men and the guards you had over there. After Mr. Harrell refused to appoint deputies, didn't he at the same time inform you that you had a right to have arms and guards to protect your property, and to protect the men working for you?

A. Yes, he did so.

Q. You have kept what arms you have there and what guards you have there solely and entirely upon the company's property, have you not?

A. Yes, sir.

Q. That is your intention, to do that?

A. Yes, sir.

Q. It is not your intention to put arms in the hands of men to go out to attack anybody, is it?

A. No, sir.

Q. But merely to resist any attack if one is made upon them?

A. Yes, sir.

Q. That is the sole object in having the arms there and have the guards there, is it not?

A. That is the sole object.

Q. To try and protect these men and protect the property from any threatened violence?

A. Yes, sir.

46 Recross-examination.

By JOHN S. LITTLE:

Q. How many have returned to work of the strikers since the issuance of the injunction?

A. Up until last Saturday——

Q. The injunction was issued last Saturday is my understanding.

A. Is that the time you mean?

Q. I say since that time how many have returned to work? They have the guarantee now of its protection. How many have gone to work?

A. There have been six additional men belonging to the strikers or connected with the strike—I don't know that they are connected with the organization—but six additional men that were out and not at work have gone to work since Saturday.

Q. You don't know whether they were "scabs" or what?

A. I don't recognize any man as a "scab."

Q. You are miner enough to know what I mean by that?

A. I don't know what you mean by it.

Q. I am sorry of it. I was using my own phraseology and phraseology you ought to be familiar with, and you seem not to be. They denominate those that do not belong to the union as scabs. That is the way they talk about them.

A. No, sir; men that belong to the union are not scabs. That is not my information.

Q. What is your definition of the term? You told me you didn't know. I would like to hear it.

A. My definition of the term is, if a man goes to work at any place during the pendency of a strike, he is called a scab. That is my definition of it.

Q. I thought you didn't know what it was. I asked you if these men that went in were not scabs?

A. I say now that no man is a scab in my eyes. They call them by different terms, but that don't make them so.

Q. Were they men of that class that are denominated scabs that went in?

A. You may call them that.

47 Q. They are denominated among the men as scabs?

A. I never denominate any man as a scab.

Q. Were they of that class of men that come within your definition of a scab?

A. They were miners. They were men. They were not scabs.

Q. Were they men who fell within that definition you give of the class that they denominate scabs?

A. It is not my definition. It is the definition of others I give.

Q. The one you have repeated?

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): I think we are here to find out the facts and not to get a lesson in philology.

Mr. JOHN S. LITTLE (of counsel for State): I confess we have run a little ways off. Mr. Brown stated that the injunction had the salutary effect of putting the men back at work. I was trying to find out how many went back to work. I was trying to ascertain if they were ones that were on the strike.

A. They were; yes, sir.

Q. That had been ordered out with the other class of independent miners?

A. I don't know whether they belonged to the union or did not. You must remember that I have no personal knowledge of the men that belong to the union and those who do not.

Q. You don't know whether they were of the same class that went out or not, do you?

A. I know they were at work for us before the strike, but I don't know whether they belonged to the union or not.

Q. I will ask you if you know how many men your company contemplated importing into the mines there.

A. I could not say anything about that.

The PROSECUTING ATTORNEY: Who is Mr. Doubleday?

The WITNESS: There is the gentleman, sitting there.

The PROSECUTING ATTORNEY: What is his position in the mines?

48 The WITNESS: General superintendent of the company.

The COURT: What became of those thirty miners? Where are they now—those that were going to be shipped in?

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): He said that they had been sent to other mines of the company.

The COURT: Where?

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.). Not in Arkansas.

The COURT: I want to know where they are.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.) to witness: State, if you know. I don't know whether he knows or not.

The WITNESS: I don't know, of my own knowledge, where they are.

The COURT: Have you information?

The WITNESS: I have been told where they were sent.

The COURT: Where is that?

The WITNESS: They were sent to Cherryvale, in the Indian Territory.

The COURT: Were they sent there to be located permanently?

The WITNESS: They were sent there to be located permanently.

The COURT: You don't intend to bring them here?

The WITNESS: Not those men; no, sir.

The COURT: Have you any other men on the way now?

The WITNESS: Not any to my knowledge.

The COURT: Have you any information as to any being on the way?

The WITNESS: Not any information as to any being on the way.

The COURT: Now, the question I am going to ask you here—of course, it is not material, so far as the matter before the court is concerned, but I want to know, in as short a way as you can tell me, what is the difference between your company and the striking miners?

The WITNESS: The difference is a question of advance in prices and the question of rules and regulations governing the operations of the mines.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): I have one of the demands here if you want to take that and explain it to the court.

The COURT: What brought about the strike? Do you know? Was it discharging fifty or sixty men? Was that it or not?

49 The WITNESS: I have been told that that precipitated the strike.

The COURT: That was the first cause of it?

The WITNESS: I have been told that that brought it on quicker than it would otherwise have come, but I don't know of my own knowledge that that was the cause of the strike.

The COURT: What demands did they make? I have no right to pass on it, but I just simply want to know.

The WITNESS: How is that?

The COURT: What demands did the striking miners make on the company?

The WITNESS: They demanded six cents advance on the price of mining coal, and then they demanded advanced in the prices of day labor, the various kinds of day labor that is employed around the mines, from 25 to 20 cents a day. They demanded that these rules be complied with, and they also demanded—that is, the general rules that they make a demand for compliance with; and then there is what is known as the local rules governing the individual mines, such as, for instance, that no man shall enter the mine on a day when the mine is not hoisting coal; that all men shall come out of the mine at one o'clock on Saturdays; that if a union man's wife or any of his children or he dies himself that the mines shall remain idle on the day on which the deceased is buried; that if a miner is so unfortunate as to be killed in the mine the mine shall stop work from that time until the time he is buried, and rules such as that. It is not necessary to enumerate any further, I think, Judge?

The COURT: That is all I wanted to know.

The WITNESS: And it states, the conclusion of the rule states, that any miner not complying with these rules will have his turn stopped the first time the mine works or the first day that he works after he has committed the offense. Miners work by the turn, and have got cars to load their coal in, and what is known as a "turn," he gets his car in turn to load. There is not a car for every man in the mine, but the men that haul the coal from the mine go by turns from A to Z. If B would violate any of these rules that they adopted, when it came to his turn he would be passed and receive no turn—that is to say, he would get no coal down from the mine that day.

50 The COURT: Suppose you had shipped in two or three—we will suppose one, two, or three car-loads of miners—on Monday last, what would have been the condition at Huntington and in this county; say that they were negroes?

The WITNESS: Well, I would have been very glad, if I was able to say that everything would have been peaceable and quiet.

The COURT: Can you say that it would have been—that is, with your knowledge of the situation? You were there on the ground and you were experienced with the miners, and of course you were aware of the difficulties or of the troubles and the quarrels between the company and the striking miners?

The WITNESS: Will you not excuse me from answering that?

The COURT: I would rather have you answer it.

The WITNESS: I am rather inclined to the opinion that unless, as expressed to Sheriff Harrell, there had been a manifestation of a sufficient force to keep the peace under any circumstances, especially since I have been informed of the miners from Jenny Lind and Bonanza doing what they did, that there might have been a little fun.

Redirect examination.

By Mr. Jos. M. Hill (of counsel for K. & T. Coal Co.):

Q. Since you have gone into the question of opinions, I will ask you if in your knowledge of the situation, if there had not been any interference by the governor in directing the company not to receive any negro miners and the railroad company not to transport them, and merely the injunction of the Federal court should remain on Monday, and you had brought in three cars of negroes or six carloads of negroes, what, in your opinion, would have been the result?

A. In my opinion, the result of a peaceful solution of the question would have been much greater than it would after that command of the governor's.

Q. As I understand you, you largely base your apprehensions that there would have been trouble on account of the action taken by the governor?

51 A. And the sheriff under the governor, and personally responsible to him.

Q. Without that action you think the chances of a peaceful solution were very much better?

A. Very much better.

Q. In fact, were you not satisfied with the situation Sunday afternoon, and of a peaceful ending of the strike?

A. What made me feel very happy, under the circumstances, was this: A pit boss at one of our mines came to me in the afternoon and told me that a delegation of our men wanted to meet me on Monday, as employees of the Kansas & Texas Coal Company, to try to effect a settlement of this trouble, and wanted me to make an appointment with them. I said I would gladly make an appointment with them and did so. An hour or two after that, when it became known—the proclamation of the governor, if I might call it so, became known—the pit boss came to me again and said that one of the men that had been at him before had come back and said the deal was off; they didn't want to meet. Consequently, I am justified in the opinion that if things had went on as contemplated under the injunction by the Federal court that there might have been a quiet and peaceful solution of the difficulties, and very soon.

Q. That is your best judgment of the situation?

A. Yes, sir.

Q. I believe the court asked you some questions about the discharge of the sixty union men as precipitating the strike. Was that any concern of this company or the Kansas & Texas Coal Co.?

A. No, sir; not at all.

Q. Where did that occur?

A. I understood it occurred down here in the Territory in what is known as the Choctaw mine.

Q. Did you know of any serious complaints or grievances existing among your workmen prior to their demand upon you?

A. Not any serious complaints. There are always complaints, but there were none more than usual.

52 Q. In answer to the court's questions about the differences in those scales, I wish you would please state to the judge just what the difference would be in the practical result to the miners in their day's wages under the scale that the company has operated upon and under the scale as proposed by them.

A. That would depend entirely upon the capacity of the miner to work.

Q. What do the miners down there generally make?

A. All the way from a dollar and a half to four and five dollars a day.

Q. Take your dollar-and-a-half man and your four-dollar-a-day man and state to the court what difference it would make in his wages whether the company adopted the union scale or whether they went on under the old scale.

A. That dollar-and-a-half man, it would make about eighteen or twenty cents; that four-dollar man, it would make about 48 or 50 cents.

Q. The average is about $2.50 to $3 a day?

A. Yes, sir.

Q. It would make about how much difference?

A. To a $2.50 man it would make about 30 or 32 cents a day.

Q. That is about the only difference in the practical workings of the two scales, so far as it would place money into the miner's pocket for his labor?

A. Yes, sir; the coal-working miner; but there are a great many men connected with the mines that are not coal miners. They are employed at various kinds of day work, and their wages, as I said before, would be increased from 20 to 25 cents a day by the acceptance of the new scale that is presented by the organization.

Recross-examination.

By Mr. JOHN S. LITTLE:

Q. With regard to these demands you have been asked about, has there been any effort on the part of the mine organization, as you call it, to secure an arbitration of these questions? This is simply a proposition for arbitration, in effect; it is not a demand as you call it?

53 A. Say, Judge, if an individual was to present that scale to you and say if you did not sign it by the 28th day of February or your mine would be stopped, what would you call it?

Q. I would either propose to him some means of settlement, or I would tell him to stop the mines.

A. You would call it a demand, wouldn't you?

Q. I asked you if there had been any effort since this strike began—I don't know who is to blame—if there had been any effort to arbitrate this dispute between the men and the company?

A. I understand that the officers of the organization have asked the officials of the coal company to confer with them on these demands.

Q. On these disputed questions?

A. Yes, sir.

Q. Do you understand that the companies have refused to do that?

A. Yes; I do so; some companies have.

Q. Including this one?

A. There is another thing that I do know—I know that men who have conceded to the demands have been called out again.

Q. That is owing to affecting more interests than the single mine, I suppose; affecting the district, I suppose?

A. Probably so; probably that is the case.

The COURT: What is the name of the man who acted as agent for bringing the miners in? Who was that?

A. I don't know his initials, but I can procure them. His name is Jones.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): What is his business?

The WITNESS: Locomotive engineer for the company at Bevier, Mo.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): He is not a coal miner; he is just detailed for this work by the company?

A. Yes, sir.

(Whereupon the witness Bennett Brown was excused and other witnesses examined, after which BENNETT BROWN was recalled and further testified as follows, to wit:

54 Redirect examination.

By Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.):

Q. What experience have you had with working with the unions?

A. I have had a very varied experience.

Q. You have heard the court's questions to Mr. Doubleday, so that you can see the point that is in the court's mind. I wish you would in your own way, without my asking you any questions, go ahead and answer those questions that have been propounded by the court.

A. I was a very active member of labor unions myself for a great many years, and was intimate for many years with the leading officers of miners' unions in America. I was very intimate with John Samuel, who was president of the Miners' National Organization back in 1873 and 1874. I was for many years an intimate and bosom companion of John McBride, who was the first president of the United Mine Workers of America; for ten years lived as close with him as you can do outside of filial relationship. Mr. Ratchford, a late president of this miners' organization, has stated in a public speech that the first idea he ever had of labor organizations fell from the lips of your humble servant. I know something about labor organizations, and I can speak upon labor organizations intelligently, and if there is anything you want to know in connection with labor organizations, I will be very frank to answer any questions that are put to me.

Mr. JAMES BRIZZOLARA (of counsel for K. & T. Coal Co.): What is the reason that your mining company will not treat with the union or with a committee from the union, or with men not in your employ awaiting on you as a committee? Just go right ahead.

A. My opinion is that the reason why my company will not treat with members of the organizations or with the executive board of the organization is that they do not want to be dictated to in the management of their property by men who absolutely know but little of the details of the management. The officers of the
55 United Mine Workers of America have vast authority over a large section of country, and while in many instances they may be intimate with the details of the work and know what is beneficial for both workmen and employers, yet in all instances they do not. Miners' organizations, like everybody else, when they become supreme sometimes become arbitrary, if I may be allowed the use of that term, and interfere with things that they have no business with. Some of those things that I mentioned as being in connection with the local rules I do not think that miners' unions have any business interfering with. If it was a question of price alone—if it was a question of how much they would receive per day or per ton, I have not a bit of doubt that the operaters of this section of the country would meet with them tomorrow and discuss it, but when it becomes a question of whether the officers of the organization will take the management of the property and relegate the officials of the corporations to the rear, then they draw the line, because, my friends, it is like this: When you will consent to confer or arbitrate with a man upon anything of which you are assured in your own mine you have a right, you at once convey a suspicion as to whether the right belongs to you or not, and whether you would consent to confer with the members of the organization or the heads of the organization as to whether your property or your mines should run one day in the week or six days in the week or eight hours in the day or ten hours in the day or men quit on Saturday or anything of that kind, then you imply a doubt in your own mind as to whether you have a right to run your own property as it suits your own will or not. That is the reason, in my opinion, why that the coal companies refuse to treat with the executive board of the miners' organization, and I am frank to say so.

Mr. JAMES BRIZZOLARA (of counsel for K. & T. Coal Co.): Does not the executive board require a majority of all the mines to come in before they will arrive at any understanding?

The WITNESS: That is implied by the late action of the organization in this district. A number of small mines signed the scale and went to work and worked peaceably and satisfactorily, so far as I know, for a number of days, when they were called out by the officers of the organization, and they laid down and quit.

56 Mr. JOS. M. HILL (of counsel for K. & T. Coal Co.): This scale we had here a moment ago—wasn't that one that had been signed up and agreed to by the coal company—that is, the Crescent Coal Company? Do you know about that being agreed to and the strike still declared on after they had signed that scale?

A. I cannot specify as to any particular company, except that I know of a few small operators engaged in a small way in mining coal, just signing this scale as presented by the organization, and were permitted to go to work and continued at work for some time, and then, for some reason or another, the organization concluded it was to their interests to ask them to stop, and they stopped.

Mr. JAMES BRIZZOLARA (of counsel for K. & T. Coal Co.): When a committee from the union waits upon you, have they any right to accept or enter into an agreement with the company until after they refer their action to the heads of the union?

A. They could not make any compromise with the company on their own account. They might make an agreement with the company. As I understand it, at the first inauguration of this strike any individual company might have made an agreement with the organization and kept on at work by signing the scale. Afterwards, I understand, by action of the organization, that the organization refused to treat with any company individually unless they could secure at least fifty per cent. or more of the coal companies engaged in doing business in the district.

Q. And that is another reason why your company will not treat with the union?

A. That is one very large reason why they will not.

(Whereupon the witness, Bennett Brown, was again excused, and after the introduction of other evidence was recalled and further testified as follows, to wit:)

57 By Mr. Jos. M. HILL:

Q. The court asked Mr. Bedwell a question which he said he was unable to answer because he did not know, and that question, in substance, was why the K. & T. Coal Company here seek to bring in negro instead of white labor. I wish you would answer that question to the court.

A. They do not seek to bring in colored miners instead of white miners. They seek to bring in any miners they can get. The reason why, in my opinion, that they can get more colored miners to come in, under existing conditions, than they can get white miners is because the colored brother is a little thicker-skinned than the white brother and he is less sensitive to vile epithets being thrown at him. It humiliates him less and angers him less, and he is less subject to resent interference and insults of that kind; consequently they get more colored men than they can get white men to come in under these conditions.

The COURT: Would not the shipping in of car-loads of negroes into Huntington have the tendency to degrade and insult the citizens who are white, as well as miners, in your opinion?

The WITNESS: That is a question I am unable to answer. So far as I am individually concerned, I can say this: That I would rather live with a white man as a neighbor—that is, the average white man as a neighbor—than I would with the average colored

man as a neighbor, but the presence of a colored man would not be insulting or a humiliation to me, in my estimation.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): In the estimation of the miners, do they take it as an insult that these negroes are to labor with them?

A. They have some objections to working alongside of colored laborers, especially at the beginning, until their olefactories become accustomed to the odor emanating from their neighbor.

Q. They do work with the negro after they become used to this odor?

A. Certainly they do.

Q. They work with them right along in your mines?

A. Yes, sir.

The COURT: Of course, the corporation you represent is
58 doing business in this county. They have a right to do business. They have a right to do business in this county. Now, do you think that that corporation has a right—well, in the first place, suppose these negroes—you do not give them homes, do you—provide homes for them?

The WITNESS: We furnish them houses to live in by paying rent.

The COURT: They pay the rent?

The WITNESS: Yes, sir.

The COURT: Those sixteen negroes you have down there, have they any property or money?

A. Well, I don't know, but I am inclined to think that their earthly possessions are not very great.

The COURT: I want to ask you if the company is under obligations—suppose you were to discharge them, with or without a cause, is the company under any obligation to send the negroes back to the place from whence they brought them?

The WITNESS: Not a single, solitary obligation, so far as I know.

The COURT: Then what becomes of them? They get no money, then, except what their daily labor provides for them, do they?

The WITNESS: Not a penny.

The COURT: They pay their house rent, and all that? Then would it be possible for these negroes, having nothing at all to commence with, to lay up anything much?

The WITNESS: That would depend upon his own self-denial and his industry and thrift.

The COURT: Then the company is under no obligation? When they are discharged, as of course they will be sooner or later, unless they die——

The WITNESS (interrupting): No; not necessarily. He may leave the company voluntarily, of his own volition; but he need not necessarily be discharged as long as he performs his duty satisfactorily to the company.

The COURT: Suppose that they of their own volition leave the country? They have a right to do it if they want to?

The WITNESS: Certainly.

59 The COURT: Then you are under no obligation to take care of them any further?

The WITNESS: I should think not.

The COURT: Nor look after them?

The WITNESS: I should think not.

The COURT: Then do you think it is right—these people would not have anything—*to* you think it would be right and proper for your company to bring in hordes of negroes here on the people of Sebastian county, to become charges upon the county and vagabonds? Do you think that is right and proper?

The WITNESS: I beg your pardon, but I do not understand that our company is bringing in any people to become charges upon the county.

The COURT: I am saying suppose they leave your service. They have a right to do it at any moment.

The WITNESS: They can go into the service——

The COURT (interrupting): You are under no obligation to put them out of this county or State?

The WITNESS: None whatever.

The COURT: If they are too poor to get out of the State, *the* they must necessarily live here or die.

The WITNESS: I suppose that is the condition.

The COURT: Do you think this people ought to be inflicted for your private benefit with a charge upon the county of these negroes?

The WITNESS: We are not inflicting the county with those people.

The COURT: Wouldn't that have the effect to do it?

The WITNESS: It would not, in my opinion. I think that is stretched to a considerable extent.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): Explain why it would not.

The WITNESS: Suppose, for instance, that a man comes into the State voluntarily, seeking employment from a company——

The COURT (interrupting): That is one question that I wanted to ask you. Do these negroes come in here voluntarily?

The WITNESS: They do.

The COURT: Do not you furnish them cars to proceed with?
60 Are you not soliciting them to come in?

The WITNESS: We are soliciting them.

The COURT: If you had not said a word to them about coming in, would they have come in? (Laughter.)

The WITNESS: That is a question. They might not have come in, but I say that asking them to come in is not forcing them to come in.

The COURT: I don't say it is forcing them, but then would these negroes around seeking employment—would they have come to Huntington for it?

The WITNESS: They do.

The COURT: Did these that you brought?

The WITNESS: No; they did not.

The COURT: Did that car-load that was shipped up into the Territory—were they seeking employment there?

The WITNESS: They were not.

The COURT: Of course, you have an agent out hunting for them—hunting up miners?

The WITNESS: That is my understanding.

The COURT: Do you know why it is the agent—that the agent at this particular time—got negroes, and nothing but negroes?

The WITNESS: Because of the answer to the first question propounded by Attorney Hill here.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): Repeat it, to make it clear.

The WITNESS: Because the white man is more sensitive to insult than the colored man.

The COURT: Negroes—where there is a strike don't you think there is always more or less danger, or apt to be, where there is a strike on?

The WITNESS: The bringing in of negroes?

The COURT: I ask you to take a strike as a strike, when the men are not at work or not engaged in their work at all. The company and the men are at outs over, maybe, a frivolous matter. I
61 don't know anything about that. Isn't there liable to be trouble then at any moment between them?

The WITNESS: Between who?

The COURT: More so than if they were going on and doing the work?

The WITNESS: Undoubtedly so.

The COURT: Why, yes. of course. Then, Mr. Brown, if the negroes are not so sensitive to insult as a white man, then that must necessarily mean that he is of a lower class of humanity, don't it? (Laughter.)

The WITNESS: I take it that that is a question.

The COURT: Then do you think you owe it to this county to ship in a low class of humanity among the people here?

The WITNESS: I want to say, Judge——

The COURT (interrupting): In other words, don't you believe it is the *the* duty you owe—you are here and have a right to do business now—there is nobody that ever questions that at all—and you have a right to employ, peaceably, any men that you want to employ; nobody questions that now; but do you believe that you have a right, as a representative of that corporation, to ship in upon these people a low grade of humanity—say, possibly, convicts, or even negroes—do you think you have the right to do that?

The WITNESS: I do think that the corporation or the company have a right to ship in labor to operate their mines.

The COURT: That does not answer my question. Do you think you have a right to select the lowest grade of men and ship in here?

The WITNESS: If we choose to do so; yes.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): That is candid, at least.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.) (to the witness): You take it, then, that a corporation or a person has a right to employ or give employment to a bad man as well as to a good one?

The WITNESS: He has that right.

62 The COURT: Let me ask you this question: Would you answer the court and say you have a right to ship into Huntington one hundred whores to run your mines? (Laughter.)

The WITNESS: We have enough of them now carrying the "white man's burden" without importing any more. (Laughter.)

The COURT: Do you contend you would have the right to ship in the very worst class of citizens upon the county?

The WITNESS: Laborers you mean?

The COURT: Yes; suppose they were convicts—ex-convicts?

The WITNESS: That is a hard position to put a man in, but when you come down——

The COURT: You are an honest man. I know you are.

The WITNESS: Whether it is right to do it or not—whether he has the legal right or not to do it or not—I say he has the right.

The COURT: That is your opinion of the law?

The WITNESS: That is my opinion of the law.

The COURT: Now, then, as a member of society, living down here, and doing business, do you think you have a right to do it? Do you think it is your duty to do it or do you think it is your duty not to do it?

The WITNESS: There is a moral right and a legal right.

The COURT: How is it as to the moral right?

The WITNESS: It depends upon the moral convictions of the man.

The COURT: Then, according to that, if a man had no moral convictions at all he could ship in anybody? (Laughter.)

The WITNESS: Yes; he can ship in anything.

By Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): You take it that your company has the right to work a man whether he is an ex-convict or a man of high standing in the community?

A. So far as his legal rights are concerned, in my opinion, there is no difference.

63 Q. He might be the worst man in creation or the best?

A. Yes, sir.

Q. And you would still have the right, as you take it, to put him to work in your mines, if he was willing to work for you, for the wages which you offer?

A. Yes, sir; absolutely, in a legal way.

The COURT: Would you have a right to ship in that class of men—ship them from another State into this State?

The WITNESS: If the laws of the United States or of this State permit you to do so you have a legal right to do so.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): I want to know if your company has not made every effort that it believes it can make to get a good class of miners to operate its mines.

A. Yes, sir; I think they have made all the effort they could make to get their mines started to work.

Q. It is not your purpose nor the purpose of your company to bring in any low grade of people merely because they are a low grade of people, is it?

A. No, sir.

Q. And the only purpose you have got in bringing in any class of people here is to work your mines?

A. Yes, sir.

Q. And you are getting the best class that is obtainable under the circumstances?

A. Yes, sir; that is my understanding.

Q. Is that your endeavor?

A. Yes, sir.

Q. That is your advice to your company, to get the best class under the circumstances.

A. It would be, if I offered any advice on the subject at all.

Q. So far as you know, isn't that the determination of all the officials of your company?

64 A. Yes, sir.

The COURT: Did you ever try, since this strike has been on, to hire any men in Sebastian county—negroes or whites—that is, outside of the miners?

The WITNESS: I never went out soliciting any men.

The COURT: Do you know whether your company ever did try in this county to hire a single miner to work in that mine since the strike has been on?

The WITNESS: Yes; we have.

The COURT: Why was it that you did not succeed?

The WITNESS: Put that question to Mr. Mitchell. He can answer it.

The COURT: Do you know whether your agent ever come to Fort Smith to see if he could hire negroes? Did your agent ever come to the Fort Smith district to see if he could hire negro or white miners?

The WITNESS: No; because we know there are no white miners or negro miners for hire in Fort Smith. We know there are no mines located in Fort Smith, and miners do not live where there are no mines.

The COURT: That might be true and it might not. I think you are correct.

The WITNESS: That would be the supposition.

The COURT: Has your agent gone into the other counties in the State of Arkansas to see whether he could get miners, negroes or whites?

The WITNESS: No, sir; because the other counties are in the same condition that our county is in. If we could not persuade our own miners to go to work, it would be futile, under the circumstances, to go to the other counties, laboring under the same conditions exactly. Will you allow me to give you my individual opinion of why the company have been under the necessity of pursuing this course?

The COURT: You can do so; yes.

The WITNESS: Then I want to say this: that if the men who wanted to work in Huntington had been allowed to use their own option, without molestation or interference in the way of threats or insults, that it would not have been necessary for the Kansas & Texas Coal Company to go out into other fields today to secure the

65 necessary amount of labor to operate their mines. Now, that is my honest opinion. I will give you that and say that if

the miners—now, remember that when I say "the miners," there are miners that would no more do this, Judge, than you sitting in that chair; but there are others, and I want to say to you that if our men had not been molested and we could not have secured under peaceable conditions enough labor to operate our mines without going into other fields to import this class of labor that we are now talking about, that before I would have staid and put those men to work I would have resigned from the employment of the company and quit; but when those who wanted to work were interfered with until their wives left their houses at midnight to come to my house, begging for protection for their husbands to be enabled to go to the mine and work sufficient to feed his wife and children, then that went a little too far for me, and while I did not countenance it at all, did not advise it, yet under the existing conditions I think our company had a perfect right to open its mines by imported labor, and had the right, if it chose to do so, to go out and secure that imported labor; and now I want to say further, Judge, and I want my organization friends to listen to what I say—if the men came out on a strike for a legitimate cause, and, instead of fifty per cent. of them leaving to seek work in other fields, ninety per cent. of them could be induced to do so, leaving ten per cent. of these men in the place to maintain themselves, and the organization, if it chose to do so, could maintain these ten men there until they died a natural death and were carried to their graves, the property of the Kansas & Texas Coal Company, or any other coal company, would stand there until it rotted and fell to the ground if we hadn't the right to go into those same fields where these other men have gone voluntarily to secure work and try to secure laborers to operate their mines. That is what I say.

Mr. Jos. M. HILL (of counsel for Kansas & Texas Coal Co.): Then it is a necessary conclusion from this situation that unless you are permitted the legal right to bring in laborers from other States to take the place of those who will not labor that your property is destroyed?

A. Yes, sir; confiscated.

66 Q. The question was asked here about these men becoming charges on the county; that if you bring in these negroes here that they would be charges on the county. Suppose these negroes quit, what would become of them?

A. I don't know what would become of them.

Q. What is the rule with miners? Where do they go? Do they scatter out?

A. They go to seek work at their vocation somewhere else, like all other people.

Q. Do you know of any of these people becoming charges on this community?

A. None that I know of.

Q. Do you apprehend that there is any danger of any of these men becoming charges upon Sebastian county if they are turned out tomorrow?

A. No, sir; I have no apprehension that any of them will become public charges.

Q. Do you know whether any of these imported men who brought about this strike are tax-payers of the county; whether they would be affected as tax-payers by these people becoming charges?

A. The men who are on a strike?

Q. No; these imported men who started the strike. Are any of them tax-payers of Sebastian county?

A. Do you mean the gentlemen who come in here to organize the union?

Q. Yes.

A. I should think none of them are.

Q. They have no interest in the county from a tax-paying standpoint?

A. I should think not; no, sir.

Q. Is there any apprehension in the community at Huntington that these men that you are bringing in or that you desire to bring in will become charges upon that community?

A. If I give my individual opinion, I will say not.

Q. You would likely know if there was such apprehension, would you not?

A. I would be likely — know it.

Q. Do you know whether such an apprehension as that has actuated this movement to prevent them?

67 A. No; I think not. I am sure not.

Q. I wish you would explain to the court the question which he has asked some of the other witnesses, and which some of the other witnesses have explained—that is, working your mines with raw and inexperienced men. Why can't you come to Fort Smith and get the laborers here on the streets, working for lower wages than you are giving, or going out and get the farmers of Sebastian county that are not making as much as these miners, and put them to work? Explain that to the court.

A. I can only answer that question or I can best answer that question by telling you my rule in charge of our mines. If there is a man comes to the mine seeking employment at Huntington, I ask him if he is a coal miner. If he says he is not, or even if he says he is, and I have reason to believe he is not an experienced miner, I give him an order to the pit boss to give him employment, but only along with and under the supervision of and in charge of an experienced miner. That is my invariable rule.

The COURT: Now, under existing circumstances could you get even the best class of negroes to go there to mine?

The WITNESS: Right here?

The COURT: I mean from anywhere. When you state there is a strike on, and state the circumstances to the negroes even, could you get the best class of negroes to go there as miners, or would they be a class or kind of desperate men, willing to take the chances on most anything?

The WITNESS: My answer to the first question answers that. A colored man, I suppose, is susceptible of civilization as well as any-

body else, and the more highly he is civilized the more sensitive he becomes. Consequently, what you would call the better class of colored people would be more disinclined to put themselves in a position open to insult and abuse than those of a lower character.

Mr. Jos. M. Hill (of counsel for K. & T. Coal Co.): How do these men you brought in there compare morally with the miners who belong to the union down there at Huntington?

68 A. Well, as I said before, there are miners and miners.

Q. I am talking about the *b*egro miners that belong to the union. I want you to make a comparison between the two sets of negroes.

A. Morally, I suppose there would not be very much, if any, difference at all.

Q. They are about a fair average with the negro miners who belong to the union and are in this strike down there?

A. Yes, sir.

Q. What is your information about this car-load of thirty that were sent to the Territory? How would they compare with the average negro miner?

A. I was informed by the general superintendent of the company that they were a very good-looking lot of fellows; well dressed, clean, and seemingly well behaved.

Q. Do you remember that the superintendent said to you, in my presence, that they were better than the average?

A. Yes, sir.

Q. You did not see them yourself?

A. No, sir.

Mr. John S. Little (of counsel for the State): Why not let the superintendent tell that?

Mr. Jos. M. Hill (of counsel for Kansas & Texas Coal Co.): He had to go off last night.

Mr. B. R. Davidson (counsel for St. L. & S. F. R. R. Co.): You speak of the sensitiveness of these parties that are working, and that the white man is a little more sensitive than the negro, and that the cultivated negro is a little more sensitive than those that are uncultivated. Now, with reference to the moral standing and the law-abiding character of these men that are referred to, is it not equal to any class of men that work in the mines? I am not speaking about their sensitive natures or their sensibility to insults.

A. Well, my experience has been that there is a just as moral and just as refined and just as gentlemanly men working in the mines as there is in any other employment or profession, so far as that is concerned; and there are just as low, immoral white

69 men working in the mines as you can pick up anywhere in the world.

Mr. B. R. Davidson (counsel for St. L. & S. F. R. R. Co.): You speak of the negro being less sensitive than the white man. Do you mean by that that he is a law-breaker any more than the white man?

A. No; I do not mean as a law-breaker at all; but I mean by

him being less sensitive that he would be less likely to resent insult.

Mr. B. R. DAVIDSON (counsel for St. L. & S. F. R. R. Co.): But he is not the less a law-abiding citizen?

A. Not in that light at all. I did not mean it in that light.

Mr. B. R. DAVIDSON (counsel for St. L. & S. F. R. R. Co.): He is not the less an honest laborer?

A. No, sir; not any the less an honest laborer.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): Because they stand the taunts of others a little better, you do not mean to be construed as meaning that they are less law-abiding or less peaceful than the others?

A. I mean to say they are more law-abiding, because they can stand more insult without violating the law than the other fellow could.

Q. Then, if you bring in the negro, who will stand the taunts, there is less liability of friction than if you brought in a high-strung Anglo-Saxon?

A. Most unquestionably so.

Recross-examination.

By Mr. EDGAR E. BRYANT:

Q. Have you ever lived in the South where the community was largely negro?

A. I have.

Q. What portion?

A. Alabama.

Q. What portion of Alabama?

A. About 100 miles below Birmingham.

Q. How long did you live there?

70 A. About a year.

Q. Is that the only experience you have ever had in living in countries with a large element of negro in them?

A. Yes, sir.

Q. Just one year in Alabama?

A. Yes, sir.

Q. This report of Mr. Doubleday—you spoke of the superintendent—it was Mr. Doubleday you were referring to. He said they were a good-looking set of negroes—that is, a respectable looking set?

A. Yes; right good-looking fellows.

Q. He was upon the stand yesterday?

A. Yes, sir.

Q. He testified here as to what he saw of them, did he not?

A. Yes; I suppose so.

Q. He gave you no other information than that he gave on the stand?

A. Not a bit.

Q. So the information you got from him, no doubt, was the same that he intended to give the court here while on the stand?

A. Practically the same.

Q. And that is the only information you have as to the appearance of that body of negroes?

A. Yes, sir.

Q. Isn't this whole strike, isn't the foundation of it, the meat of it, the demand of the miners for recognition as an organization and the refusal upon the part of the company? Isn't that the real, crucial point in controversy? Of course, they have schedules that they put in, but they are mere incidental matters. Isn't the real point between them the demand for the recognition by the companies of their union?

A. Do I have to answer that question?

The COURT: Yes. Just answer it. I would like to hear it.

The WITNESS: Well, in my opinion, that is so, along with other things; that the recognition of the union is one of the contentious features.

71 Mr. EDGAR E. BRYANT (of counsel for State): Isn't that the one point around which all the others cluster as minor issues?

A. I should say that it is—that is, so far as we individually are concerned. I do not speak for any other company.

Q. But, in your opinion, isn't that really the point on which the battle is now turning?

A. If I was to give an honest opinion, I would say that the recognition of the union was the major feature of contention.

Q. Now, then, the miners who are out down there, who are striking, you say a large majority of them are willing to go back to work. If this other question was not in it, you could agree on terms with them, don't you think? That you could agree on the scales. There would be no trouble about that, if this contention wasn't in the way?

A. No, sir; I do not say that.

Q. Don't you believe you could, if this wasn't?

A. I don't believe we could.

Q. You believe that the greater part of them would still remain on the strike?

A. I believe that those who want to remain on a strike now would remain on a strike then.

Q. Then, you say that a large part of them would be willing to go back to work. Those who would be willing to go back to work are held out by other forces, you think?

A. Yes; I think so.

Q. One of the forces that hold them out is the desire to act in unity?

A. I am not sure about that.

Q. It is the power of the organization, you think, that holds them out?

A. I don't know that it is the power of the organization at all.

Q. You don't know what it is that holds them out?

A. I don't know what it is, and I don't know of whom it is composed. I am rather of the opinion that it is not composed of the

organization or that the organization does not countenance that policy.

72 Q. You do not think the organization countenances that policy?

A. No, sir; I don't think they do.

By the PROS. ATT'Y:

Q. Since you have no information save that which you have described of those that it was proposed to ship in last Sunday, I want to ask you with a view of determining the class of the eighteen you have. I believe you stated yesterday that they appeared to be a very good class of negroes. Did you, or is that true? I forget what you stated about it.

A. I might not say a very good class, but an average class, compared with other miners.

Q. With a view of better determining their class of intelligence and citizenship and moral proclivities, I want to ask you if it is not a fact that within the first twenty-four hours of their arrival there, there were serious disturbances, resulting in the loss of an eye among those?

A. Not to the loss of an eye, but to the blackening of an eye. We sometimes get an eye blackened and do not lose it. These fellows are liable to fall out and fight among themselves, just as you and I would, while we might not reach for each other quite as far as they would. The other day in the court here two of you came pretty near having an affair of that kind—you highly civilized gentlemen, that you would not think would resort to anything of that kind. You took advantage of the absence of the court and got to fighting each other. I noticed that you did not get very near each other—not quite as near as these fellows down yonder.

Q. Your testimony inferentially conveys the information for which I am asking, and yet I want to put the specific question. Who paid the expenses of the negroes that were brought in here?

A. Primarily they were paid by the company. Of course, it will be charged to them. It is now charged to them.

Q. Then it is paid by the company?

A. No; I beg your pardon.

Q. I mean it was advanced by the company?

A. Yes, sir.

73 Mr. JOS. M. HILL (of counsel for K. & T. Coal Co.): Advanced by the company and charged against their wages?

The WITNESS: Yes, sir.

The PROSECUTING ATTORNEY: You have explained that the company attempted to get, or rather that your idea is that they attempted to get and would accept, miners indiscriminately, regardless of color and character, and you have very aptly explained to the court how it happens to result in getting colored men *other* than *than* other people. I want to ask you if in this particular instance you did not start with the specific view of getting colored men?

A. We did not, so far as my individual knowledge goes.

Q. I will ask you if you have information on that point? Didn't

the company send a colored man—didn't the company send a negro and not a white man as the agent, with five hundred dollars in money, seeking these people?

A. That man Jones was a white man that brought in these sixteen colored men, as white as you or I.

Q. Jones was with the first set—the set that you now have?

A. Yes, sir.

Q. Was there not a colored man started from Huntington with $500 in money to circulate around, if necessary, to find colored miners?

A. There was not, positively.

Q. And, to your information, was a colored man sent from another point in the service of the company for such purpose?

A. According to my information, there was a man sent.

Q. Well, a colored man, from some point?

A. Not to my positive knowledge; no, sir.

Q. You state, not to your knowledge. I don't know whether you make any distinction between the word "knowledge" and "information." Have you any information?

74 A. I have information of a colored man being in the employment of the company for that purpose.

Q. You have?

A. Yes, sir; has been. Perhaps not now, but has been.

Q. From what point?

A. Originally he was working at Huntington, and I sent him to St. Louis with a horse—in charge of a horse, a riding horse—that we bought down in this country for the service of the president of the company, and my understanding—and I want to be perfectly plain and open about his matter—my understanding is when he reached St. Louis the president of the company had a conversation with him and employed him from that point to go out into the States and seek men for his work.

Q. Now, then, I will ask you if that is not the first agent, to your information, that was started out to seek miners to substitute these vacancies?

A. He is not. This man Jones was in the field before he ever left Huntington with the horse.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): When did this man get to St. Louis; do you know?

The WITNESS: I could not be certain as to the date, but I should judge it was on or about, probably, the 12th or 13th day of April, as near as I can remember.

The PROSECUTING ATTORNEY: In order that we may have at all times before the court the scale that you have referred to, in a separate paper, that is set forth in your complaint in the United States court?

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): Yes; I attempted to copy it correctly. I have not verified it. I think it is correct.

The PROS. ATT'Y: Then I will make reference to this. Since you have, evidently, wide familiarity and experience with the miners'

union—its conduct, experience, and rules—and have answered Judge Bryant that, in your judgment, the major contention is the recognition of the miners' union. I will ask you if the miners' union has not been recognized in Pennsylvania, Ohio, and the most of the larger mining States in the United States?

A. My impression is that it has.

75 Q. Now, I desire to ask you this question: If it is not a fact that of all of the questions raised in this scale and propositions submitted to the company, if the scales under which miners work in most of the other mining States, and the larger mining States, comprising larger mining interests, are not more favorable to the miners and the miners' union than the request made by your employees?

A. That is a very comprehensive question. Could you not condense it just a little bit and let me know what you are trying to get at?

Q. I will try it. Isn't the scale and terms for which miners work in other mining States of the Union more favorable to the miner than the scale proposed by the miners that were in your employ?

A. The scale upon which miners work in other States, you mean?

Q. Yes.

A. More favorable to the miners than the scale under which we were working?

Q. You can answer that first.

A. Or the scale proposed to us?

Q. Yes.

A. Then I say decidedly not, because the average wages for coal miners in Ohio, Illinois, and Pennsylvania will not compare favorably with the wages earned under even the existing scale before the strike.

Q. It is a fact that the miners' union is recognized in the other States?

A. Yes, sir.

Q. Then, if you know, perhaps you can answer this question: Is it not a fact that the miners' union, and the favorable scales under which they worked in the different States, including Illinois, did not prevail invariably, except about Virden and Pana, and that they struck only for the purpose of securing uniform rates, or rather to secure the same contracts that prevailed all over these other States, and all over the balance of Illinois, and were simply asked to come up to what the others were receiving, to wit, a recognition of the union, as well as an advance of the scale to what it was in the other places?

76 A. That seems to be the contention, so far as newspaper reports were concerned.

Q. Do you know what the actual facts are beyond that?

A. No, sir.

Q. Have you any reason to believe the newspaper representations were incorrect on that point?

A. I have reason to believe that newspaper reports of these things are never correct, and on general principles.

Q. Is it not a fact that in the other States where you say the miners' union is recognized they reached the scale they did by consultation by the miners' union and the mine owners or mine operators?

A. Partly by consultation and partly by coercion. That is my opinion, if you want my opinion about it.

Q. How do they fix the scale in other States?

A. They fix the scales by a joint committee.

Q. Joint between whom?

A. Between the operators and the miners. That is my impression about how these scales were fixed. Mr. Mitchell could give you more information on that line than I can, because he is in the business.

Q. They fix the scale by a convention of representatives of the two interests?

A. That is my understanding.

Q. When a question arises as to what a scale shall be, how do they reach it, then, in other States?

A. I am not positive as to how they reach it when there is a contention, but I suppose they reach it upon the principle of each man giving his opinion.

Q. Now, if in another State than where the union is recognized the miners make demand for an increase of wages, or, on the other hand, if the company indicates to the miners they will be forced to reduce prices for some reason on the part of the company, what is the result, and how do they reach a conclusion upon it?

A. I suppose they have a conference upon it, and see whether they can reach some amicable understanding to adjust the difficulty.

77 Q. Between the operators and the union?

A. Yes, sir.

Q. Then your company in this instance refuse to do that?

A. They have refused to do that, but the question of wages was not the only question.

Q. Certainly. It is a question of recognition here.

A. The question of wages was not the only question submitted by the miner's union.

Q. Whatever the question, the same method prevails in the other States?

A. I don't know anything about that part of it at all. I understand, so far as wages are concerned, they come to some mutual understanding by conference, but in regard to those rules I spoke of yesterday and regulations governing the operations of the mine, I have no knowledge at all of how they proceed.

Q. Since you have stated to Judge Bryant that the question of recognition was the major contention, is it not a fact that when this strike was first declared, the latter part of February, that there were only very few requests on the part of the miners at that time, and not near as many as in the present scale presented?

A. I beg your pardon. There were a great many more than was in the printed scale presented.

Q. You have been making concessions since that time?

A. No, sir; we have not, to my knowledge. There has nothing been submitted to us outside of the original scale, but the original scale was supplemented by a series of rules that was drawn up by the local organization and presented to the company for signature locally.

Q. If your company would recognize the miners' union and send a committee to meet with their committee, do you not believe that today this strike matter could be settled?

A. I don't believe it could.

Q. Don't you think it could have been done when the miners first submitted the proposition for a conference, before the feeling arose?

A. Had the executive board of the organization maintained their right to the enforcement of these rules and regulations that they had drawn up, I should say they would not have been settled.

78 Q. You don't know whether they would have maintained it if you had met them?

A. I just say if they had, and I do not see why a person submits a proposition if he does not mean to maintain it. We are not playing poker in this thing.

Q. You say in other States they settle these questions by conference?

A. I say they do the wage question. I know nothing at all about the side issues.

Q. You don't know how the miners ever did secure recognition from the companies?

A. Yes; I do know how they lots of times secure recognition from the companies.

Q. Whether unfairly or fairly, they did secure recognition in Pennsylvania, Indiana, Ohio, and Illinois?

A. Yes; I will acknowledge it all. You may take the eastern part of the country from the Mississippi river, and call it all, if you choose to do so, with the exception of one or two States. I am perfectly willing to acknowledge all of it.

Q. Isn't that also true in a great many States west of the Mississippi, to wit, Iowa and Kansas, and I don't know what others, if you know?

A. Well, really I don't think —. So far as my personal information goes, I have no direct knowledge; but so far as my information goes, I don't think that the organization is recognized by the operators in Kansas or Missouri.

Q. You said awhile ago that you did not intend to indicate that the less cultivated class of negro labor was more lawless. I will ask you on that very point if you do not think that they do become themselves thus insulting and provocative of riotousness and lawlessness after they have been imported and turned loose out of the stockades.

A. No; I have no knowledge of that at all.

Q. You think not.

A. I have not got any information on that.

Q. From your experience at Huntington, even for the short time

you have been out there as to these eighteen or twenty, is in
79 not a fact that they have been carrying private arms about the streets and away from their business, and long knives, or at least more or less of that?

A. Yes; I have heard of one man being arrested with a knife in his pocket, whose life had been threatened, and the woman with whom he was boarding had received a letter stating if she would not fire him out of the house the house would be blown up with dynamite. I did hear of his being arrested and a knife found upon his person.

Q. What kind of a knife?

A. I don't know. I didn't see the knife. I heard it was a butcher knife.

Q. What class of man or nationality was he?

A. He was a German of some kind. He may have been—I don't know. I call all Southern Europe fellows Germans.

Mr. DAN. HOGAN: He was a Swede, wasn't he?

The WITNESS: He might have been a Swede.

The PROS. ATT'Y: What advice did you give him, and what did you say to him?

A. To go into that whole story and make it clear to the court: I was out of town the day he was arrested. I was informed he had been arrested and hurried before the justice of the peace, without any show of giving a defense.

Q. Without any show of raising a defense?

A. Yes, sir; and had been found guilty and fined $50 and costs for carrying concealed weapons; and when I came into town they were hauling him off to jail. I asked the constables to stop and take the man into my office, and I would take an appeal and give bond for the man's appearance in the district court. All of which was done. Under the circumstances I went to the telephone and called up Mr. Herrell, and explained to him that this man had been arrested for carrying a concealed weapon.

Q. Sheriff Harrell?

A. Yes, sir; and that the man's life had been threatened; that he had been vilified and abused and called all kinds of insult-
80 ing names; that the woman with whom he was boarding had received a letter stating if she would not fire him out of the house that her house would be blown up by dynamite, and saying that they hoped she would get him out, and then if not they would receive their answer on the night of the explosion by rough rider from the Wild West. The sheriff told me that he had no authority under the law to give that man permission to carry weapons to defend himself. I come back and I said to this man, "I understand that the law of Arkansas will not permit you to carry concealed weapons, but I do not understand that it will prevent you from carrying a gun or a Winchester or a United States cannon if you choose to do so, and if any man molests you or attacks you my advice to you is to shoot him and blow his head off in self-defense, but to be sure and let the other fellow be the aggressor, and only

act in the defense of your own personal safety." That was my advice to that man.

Q. Now, the cause of your having the conference you had and the cause of your expressing yourself was information of an injustice that had been done to that man?

A. Yes, sir; the man had been working every day since the first inception of the strike, and he could not be terrorized into stopping his work, and I felt that he was being railroaded into jail for that purpose.

Q. Do you not recognize the probability of even you and your best citizens being misled by wrong information?

A. Most unquestionably so.

Q. Now, then, you had information that he was unjustly treated in your local court?

A. I heard so.

Q. That was before Esquire Hile?

A. No, sir; before Clifft.

Q. An old gentleman that has lived in that country many, many years?

A. Yes, sir.

Q. And considered one of the best citizens of that country?

A. I suppose he is.

Q. And yet the information as it reached you, repeated no telling how many times, was that the man had been very unjustly treated in this court?

81 A. That he had received no fair trial.

Q. If you had been present you might have found conditions quite different. We have the fact that Squire Cliff is one of the best citizens of Sebastian county and a reputable gentleman, conceded to be as honest a gentleman as God ever made a man.

A. I have no reason to doubt it.

Q. Have you any personal knowledge of any violence offered to any of your employees?

A. Direct personal knowledge.

Q. Yes.

A. Not direct personal knowledge. I never saw anybody assault my employees.

Q. I recognize we are left, of course, to these flying reports. The causes of the excitement is what we are after.

(No response.)

Redirect examination.

By Mr. B. R. DAVIDSON:

Q. Just explain the thirteenth item there of their demand (handing witness demand of miners' organization); that wasn't explained in your testimony. Explain the effect of it. Read it first, please.

A. It reads, "13. The operators of this district shall grant the check-off system."

Q. Explain what is meant by that and what the effect of it is.

A. In what light do you mean?

Q. I mean what the check-off system is—the court does not understand mining terms—what the workings of that system are.

A. The check-off system, as I understand it, is this: that if a miner subscribes a portion of his earnings for any purpose whatever the amount shall be deducted out of his earnings and placed to the credit on the books of the company of some person denominated by the organization, who will be entitled to draw that amount and use it for the purposes for which it is subscribed.

82 Q. It makes the mining company become the book-keeper of the party and of the strike and requires it to appropriate the money?

A. Let me explain it this way: For instance, the miners almost invariably employ check weighmen to see their coal is weighed and credited correctly. The way the miners pay these check weighmen is to give him authority to deduct from their earnings a certain amount of the coal produced and credit it to himself. In that way he practically becomes an employee of the company so far as his credits and debits are concerned, because he appears on the books of the company just the same as the miners and he draws his pay on pay-day just the same as the employee does. If a man would get hurt in the mines and the miners felt like subscribing to his assistance, the amount each man subscribes would be charged to his earnings and credited to this man on the books of the company, so that he could draw on that amount or receive it on the day of settlement just the same as if he had been working in the mines and had produced so much coal and had worked so many days and had so much placed to his credit. That is what I understand to be the check-off system; and suppose, for instance, that the miners of the Kansas & Texas Coal Company were on a strike in Missouri or in the Territory or in Kansas, and the miners working for the Kansas & Texas Coal Company down in Arkansas, say, felt disposed to contribute a part of their earnings towards their assistance while they were out on a strike; by this check-off system the Kansas & Texas Coal Company would become the agents for collecting the money for the assistance of the men who were striking in their employment in other portions of the country—that is to say, they would be collecting the money from the men and turning it over to a committee, who would then sent it to the miners who were on a strike in another State, or for any other purpose whatever. If the miners sent a delegate to a convention and they wanted to pursue this method of collecting his wages and his expenses, that amount would be charged to the men and credited to him just in the same way. That is what I understand to be the check-off system.

83 Recross-examination.

By the PROS. ATT'Y:

Q. Is it not a fact that the check-off system prevails in these other mining States you have named?

A. Not to my personal knowledge; no, sir. It may.

The COURT: What would there be to prevent them? If they

wanted to contribute to a certain thing as an organization, why could not they contribute and keep their own books?

The WITNESS: I ask the reason why myself; why instead of going through the company with this concern they do not attend to their own business and collect their own money for this. It conveys to me a suspicion of their honesty that after subscribing they might not pay.

The COURT: Of course, that is just a matter of opinion.

Mr. B. R. DAVIDSON (counsel for St. L. & S. F. R. R. Co.): It is a matter of very great inconvenience to the company.

The PROS. ATT'Y: Do the miners pay their store bills or do you appropriate the check-off system when it comes to that?

A. Appropriate it, if you call it by that term. (Laughter.)

Q. So you adopt it when it suits you and you don't when it does not?

A. I beg your pardon. For any reasonable or honorable purpose we never refuse to do what the men ask us in that way.

Q. I say appropriate, because that is the word, I suppose, when it is not done by mutual consent.

A. We both understand each other.

(Whereupon this witness, BENNETT BROWN, was again excused and other witnesses examined, after which he was recalled and further testified as follows, to wit:)

Redirect examination.

By Mr. Jos. M. HILL:

Q. There are several affidavits here about the guns that are down there. I believe you testified in your direct examination about the the number of guns there, did you not?

84 A. Yes, sir.

Q. I believe the question was asked you if you had brought in any guns, and you said you did. How many did you bring in?

A. We brought in eight guns from Fort Smith and we had two guns in the office.

Q. This box of guns that was referred to in the affidavits as being at the depot on Saturday, are those the guns included in those you stated to the court were at the mine?

A. No; I think they came in on Friday.

Q. This affidavit has it Saturday, I believe. The box of guns was the other guns referred to?

A. Yes, sir.

Q. You have already made a statement about what you said to Peter Zrossig on the cannon business?

A. Yes, sir.

Q. Here is the affidavit of Sol. Lodge, which states: "On last Saturday night he saw B. R. Brown, supt. of the K. & T. Coal Co., and the cashier of the same, together with two other men, going west in the direction of the camp where the K. & T. Coal Co. have the imported

negroes, and were carrying guns, and said Sol. Lodge further states," etc. What are the facts about that?

A. It is absolutely true, with the exception of Brown carrying a gun. He had another man carrying it for him.

Q. Here is the affidavit of George A. Hutchinson, who states: "On the night of the 24th of April, 1899, while going home about 9 o'clock, he was held up by an armed guard of the K. & T. Coal Company, who stated he was an officer and inquired where I was going, and he presented his gun, but did not point it directly at me. I further state that I know of no striking miners carrying arms." Do you know anything about the facts stated there?

A. I know nothing about the facts in the case, but I am prepared to say that it is absolutely without any foundation at all. The K. & T. Coal Company have nobody representing officers, and they do not have men in town. They have men out at the mine. That is the only place they have men.

Q. If any one held him up, as he stated here, it was not an employee of the K. & T. Coal Company?

85 A. It was not; no, sir.

—. Here is the affidavit of J. N. Roberts, who states that "on last Saturday morning he had started to George Robinson's, and was walking up the said railroad and came to a trestle, and was going to cross it, and was stopped by A. B. Brown, supt. of the K. & T. Coal Co., who told him not to cross. I first thought he was joking, and told him I was going to cross. He told me if I undertook to go by he would kick me off in the creek. So I turned back. That was before any injunction notices were posted. I had been in the habit of traveling that way. Mr. Brown told me the union men had no business on that side of the creek. His conduct was very rude and insulting." I wish you would state what facts there are to justify that, if any.

A. What day was that on?

Q. He says on last Saturday.

A. Well, if it is necessary to satisfy the court, I could prove an alibi—that I wasn't there Saturday at all; but the whole thing is an absolute fabrication, without a coloring of fact.

Q. Did you use any such expression as that there was no union men had business on that side of the creek?

A. I never use the word "union" men at all in talking over the affairs of this strike.

Q. Was this trestle referred to there on the ground of the K. & T. Coal Co.?

A. It is.

Q. I believe you have heretofore explained that the company instructed the men not to go on the grounds over there where these men are, and you tried to keep them out of there?

A. I have said that owing to the threats that had been made and the feeling that existed, that in order to preserve the peace it was necessary that the two parties, if you might call them by that name, should not mingle together.

Q. And you tried to keep the people away from them?

A. Yes; I tried to keep them away from around that pit where those men are located.

86 Q. Here is the affidavit of one Davis, who states: "Last Saturday he and his wife were out fishing and were near the K. & T. trestle * * * and Supt. A. B. Brown, of the K. & T. Coal Co., was there, and he asked me where I was going, and I told him I was going across the creek, and he told me I was not and told me I would not be allowed to cross—that the union men had no business on the company's property on that side of the creek. This was before there was any injunction notice posted. He was in an ill humor." What do you know about that?

A. I could not be in an ill humor on the Sabbath day. That is not possible.

Q. I believe he said this was on Saturday. I read it wrong.

A. That is on Sunday that that man refers to. I remember the instance. He was crossing the creek, he and his wife and mother or wife's mother, and I walked very quietly up to him, and in as gentlemanly a way as I could, for I hope I will never be accused of insulting a woman or a man in the presence of a woman, and told him the condition of affairs, and that I thought under the circumstances it was better that this not be used as a thoroughfare until this trouble was settled. I didn't put him off his course at all, but simply asked him, in the future, if he had any business in this direction, to try to select another route to conduct him, and, so far as being in an ill humor or using any ungentlemanly words to that man, I can say, with a clear conscience, that I never did, and "union men" was never mentioned. The word "union" was never mentioned by Brown.

Q. There are a good many other things in these affiidavits, but I believe you have covered them generally in your direct testimony, and I do not care to repeat anything.

A. It is not necessary. I do not believe that the court takes Mr. Brown for a fool.

Q. Now, Mr. Brown, here is a letter that is supposed to have been sent to that lady down there. Was that furnished to you as a copy of a letter that was sent to her?

A. No, sir; it was furnished as the original of the letter that was sent to her. It was brought to me by another gentleman, who was boarding with her.

87 Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): Without taking up the time to read it, I just ask to introduce that in evidence. It is this letter from the Rough Rider of the West that has been referred to here.

The WITNESS: That is the only time that I was guilty of any threats of violence. I said when I got that letter that I wasn't a fighting man, but I was prepared to lick the stuffing out of any man that would write such a letter to any woman, and I say so now.

Recross-examination.

By the PROS. ATT'Y:

Q. Do you know a man by the name of Hutchinson, living out north of Huntington—a tall, large man, a farmer?

A. Not by name; I might know him by seeing him.

Q. I wanted to inquire whether that farmer was this Hutchinson who made the affidavit? I don't know myself whether he is or not.

A. I don't know, but on Sunday morning there was a large man, stout man, came from the north down the switch leading to 53, and I met him on the switch, and I sat down and discussed the question for fully half an hour, and I explained to him the reason why that I didn't want that to be made a public thoroughfare, in the way any two men would meet and quietly talk over the matter; but this man told me, in the course of our conversation, if I understood him right, that he was either a fireman for the Prairie Creek Coal Company or was firing shots for the Prairie Creek Coal Company.

Q. I suspect that is the man, then. Now, in passing towards Prairie Creek Coal Company, you would have to pass by one of your mines, would you not? Which one?

A. He would necessarily, in going to town, if he would not go a long way out of the way, pass near to 51.

Q. You had guards at 51, didn't you?

A. No, sir; not a guard.

Q. You had not?

A. No, sir.

Q. And if any of the persons that you had armed, or supposed to be armed, at specified times, as directed, for guarding purposes, happened to be out at places that you hadn't stationed them, you, of course, don't know it?

88 A. I don't know it, but they were not instructed by me to go to these places. They were instructed by me to stay right where they were stationed.

Q. Anybody that you had stationed anywhere with arms for a specified purpose, of course, were not instructed to make mistakes and hold up anybody that wasn't infringing upon your rights?

A. Certainly not.

Q. Of course not. I appreciate that.

(Witness excused.)

89 *Answer.*

In the United States Circuit Court for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS at the Relation of Jo. JOHNSON, Prosecuting Attorney, Plaintiff,
vs.
KANSAS & TEXAS COAL COMPANY and ST. LOUIS & SAN Francisco Railroad Company, Defendants.
} Answer.

Come the Kansas & Texas Coal Company and the St. Louis & San Francisco Railroad Company and for further answer hereunto state:

1. That the complaint does not state facts sufficient to constitute a cause of action.

2. That it is true, as alleged, that the defendant railroad company is a corporation organized under the laws of the State of Missouri, owning and operating a line of railroad in the 12th judicial circuit of Arkansas and in Sebastian county; and it is true that the defendant coal company is a corporation organized under the laws of the State of Missouri, owning and operating a coal mine in the town of Huntington, Greenwood district of Sebastian county.

That it is not true, as alleged, that there is a high state of excitement and hot condition of blood prevailing, even now or at the time when the allegations were made, between the striking miners and their sympathizers on the one side and the coal company and its employees on the other; that all the excitement and hot blood existing was existing on the part of the striking miners and their sympathizers, which was engendered by the action of said striking miners and their sympathizers attempting to interfere with the management and control of the defendant coal company's business.

That it is true that the coal company was to import into the State, county, and town of Huntington, over the line of said railroad, a large number of miners, but it is not true that they were armed men, nor is it true that they were of the low and lawless type of humanity, nor is it true that these miners endangered the public peace, morals, or good health of the town of Huntington or the county of Sebastian.

That it is not true that the action of the defendant coal company would become a great public nuisance and would destroy the peace and morals and good health of said town and county and would lead to riot and bloodshed and to the dissemination of contagious and infectious diseases; that if the action of the defendants would destroy the peace of said community, it would be because the relator, as prosecuting attorney, the sheriff, and other peace officers of the State of Arkansas and county of Sebastian, failed to do their duty in suppressing riots and disorders.

That if there were any violation of the criminal laws of the State of Arkansas threatened on account of the importation of miners by the

defendant coal company, it was the duty of the relator, as prosecuting attorney, and the sheriff and other peace officers of the county of Sebastian to prevent the same, which they could easily do, and that such threatened violation of the criminal laws was not threatened on the part of either of these defendants, nor of their employees, nor of their imported miners, but said threatened violation of the law was wholly and entirely by and from the striking miners and their sympathizers, and the action of the State should have been to prevent the violation of the laws by them, and if the State saw proper to obtain an injunction against any one, it should have obtained said injunction against said striking miners, who were threatening to violate the criminal laws of the State, and not against these defendants, nor their employees, nor the imported miners, who were not threatening nor purposed or intended to violate any of the laws of the State of Arkansas.

That the said coal company in the due performance of its business found it necessary to bring miners from other States to operate its mines in Sebastian county; that said miners were citizens of the United States and came at the solicitation of the said coal company to work in its mines in Sebastian county.

91 That the defendant railroad company is a common carrier, transporting passengers for hire over its line of railroad running into and through the States of Arkansas, Missouri, Kansas, Texas, and the Territory of Oklahoma and the Indian Territory; that as such common carrier it was engaged in interstate commerce, and while thus engaged in interstate commerce it was solicited by the defendant coal company to carry over its line from the States of Missouri and Kansas various and divers citizens of the United States who sought to go from said States of Missouri and Kansas to the town of Huntington, in the State of Arkansas, over the line of said defendant railroad company; that said defendant coal company contracted with various and divers miners in other States than Arkansas, said miners with whom it contracted being citizens of the United States, for them to come to the town of Huntington and work in the mines of said coal company, and pursuant to such contracts it did bring in over the line of the defendant railroad various and divers miners from the State of Iowa and other States, and at the time of the institution of this suit were intending to bring to said town of Huntington various and divers other citizens from other States than Arkansas, over the line of the defendant railroad company, said miners being brought over said line through the States of Missouri and Arkansas to said mines at Huntington.

That the injunction granted pursuant to the prayer of the complainant herein violates the Constitution and laws of the United States and the 14th amendment thereto, in that it deprives citizens of other States of the rights, privileges, and immunities enjoyed by the citizens of the State of Arkansas, and it violates the Constitution of the United States and the 14th amendment thereof, in that it prevents citizens of the United States from their lawful pursuit of happiness; that the said injunction granted pursuant to the allegations

of the complaint is an interference with the interstate commerce of the defendant railroad and the defendant coal company.

That said defendant coal company is engaged in producing
92 coal to supply to said defendant railroad and other corporations and citizens of other States with whom it has contracted to furnish coal, and said injunction issued pursuant to the allegations of the complaint interferes with and conflicts with its right to carry out its contract with said defendant railroad and other corporations and other citizens of other States, in that it interferes with its business, interferes with its contracts, and interferes with its right to lawfully pursue its business.

That this said injunction granted pursuant to the prayer of the complainant deprives the defendants of their property without due process of law, in that it prevents the defendants from properly carrying on their respective lines of business according to their right to engage in their respective lines of business.

Wherefore, the premises considered, these defendants pray that said injunction be dissolved and that this action be dismissed and that defendants recover their costs and all other and further relief which in equity and good conscience they are entitled to receive.

B. R. DAVIDSON &
HILL & BRIZZOLARA,
Att'ys for Defendants.

(Endorsed on back:) Filed in open court July 31st, 1899. Thomas Boles, clerk of the court.

93 *Motion to Restrain.*

In the United States Circuit Court for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS at the Relation of Jo. JOHNSON, Prosecuting Attorney, Plaintiff,
vs.
KANSAS & TEXAS COAL COMPANY & ST. LOUIS & SAN FRANCISCO Railroad Company, Defendants.

Come the defendants herein, The Kansas & Texas Coal Company and The St. Louis & San Francisco Railroad Company, and move the court that it issue a restraining order restraining Jo. Johnson, his agents, attorneys, representatives, from in any manner or way prosecuting or causing to be prosecuted or taking any steps in, toward, or about the prosecution or continuation of the cause of The State of Arkansas at the relation of Jo. Johnson, prosecuting attorney, *vs.* Kansas & Texas Coal Company and St. Louis & San Francisco Railroad Co., in Sebastian circuit court for the Greenwood district, State of Arkansas, and for cause thereof say:

That on the 23rd day of April, 1899, said cause was filed in said court and summons in equity issued and was served upon defendants, returnable to the September, 1899, term of said court.

That on the 18th day of July, being a day of the said Sebastian circuit court for the Greenwood district, said court then being in session, these defendants presented their bond and petition for removal of said cause to this honorable court; that said bond and petition were in due form and set forth good and sufficient grounds for the removal of said cause to this honorable court.

That the said Sebastian circuit court for the Greenwood district did upon said day deny the petition for the removal of said cause to this court; to which action of said court these defendants at the time excepted; that thereafter, to wit, on the 25th day of July, these defendants caused a certified copy of the record and of all the pleadings and the papers in said cause to be filed in this honorable court.

94 That upon the 26th day of July, the same being a day of the said Sebastian circuit court for the Greenwood district, these defendants caused to be filed in open court a motion that the action then pending in said court be dismissed for want of jurisdiction, and set forth as the grounds of the motion the said removal of said cause to this court and filing of the transcript herein; that the said court overruled said motion and denied the same and held that it, the said Sebastian circuit court for the Greenwood district, had jurisdiction of said cause, and that the same had not been removed to this court.

That the purpose and intention of the relator, Jo. Johnson, prosecuting attorney of the 12th judicial circuit, is to continue to prosecute said cause in the said Sebastian circuit court for the Greenwood district; that the prosecution of the same in said court might involve proceedings for contempt of said court and might involve the defendants and their employees in vexatious litigation, and said Sebastian circuit court for the Greenwood district is totally without jurisdiction of said cause, and such proceedings as might be had therein would be *coram non judice* and void, and be vexatious and annoying to these defendants and cause them and their employees trouble, inconvenience, and unnecessary litigation.

Wherefore, the premises considered, these defendants pray that Jo. Johnson, relator in said suit, his agents, attorneys, and representatives, be enjoined and restrained from in any manner, form, or way prosecuting or continuing to prosecute said suit, or any contempt proceedings therein or any other matters and things relating to the same in said Sebastian circuit court for the Greenwood district.

HILL & BRIZZOLARA,
Att'ys for Def'ts.

(Endorsed on back:) Filed in open court July 31st, 1899. Thomas Boles, clerk of the court.

95 *Motion to Dismiss.*

In the Circuit Court of the United States for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS, Plaintiff,
vs.
KANSAS & TEXAS COAL CO. ET AL., Defendants. } No. 121. Equity.

Comes the plaintiff, by her attorney, Ben T. Du Val, and moves the court to dismiss this case and strike the same from the docket for the following reasons:

First. Because the petition for removal and transcript of the record of the circuit court of Sebastian county for the Greenwood district thereof show that it is not removable to this court under the laws of the United States.

Second. Because the State of Arkansas being plaintiff and defendants alleged to be citizens of the State of Missouri, this court could acquire no jurisdiction of the grounds of diverse citizenship.

Third. Because the record aforesaid shows that it is not a civil action for the enforcement of a right arising under the Constitution and laws of the United States or treaties made under their authority or arose under the Constitution, laws, and treaties aforesaid.

Fourth. Because under the constitution and laws of the State of Arkansas The St. Louis & San Francisco Railway Company, one of the defendants, is a domestic corporation and is subject to the jurisdiction of the courts of said State.

Wherefore the plaintiff says that this court has no jurisdiction to hear and determine the matters in controversy herein.

BEN. T. DU VAL,
Att'y for State of Arkansas.

(Endorsed on back:) Filed Aug. 7, 1899. Thomas Boles, clerk, by Florence Hammersly, D. C.

96 *Motion to Dissolve Injunction.*

In the Circuit Court of the United States for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS at the Relation of Jo. JOHNSON, Prosecuting Attorney, Plaintiff,
vs.
KANSAS & TEXAS COAL COMPANY and ST. LOUIS & SAN FRANCISCO Railroad Company, Defendants.

Come the defendants, Kansas & Texas Coal Company and The St. Louis & San Francisco Railroad Company, and move the court to dissolve the injunction heretofore granted in this action by the judge of the Sebastian circuit court for the Greenwood district, and for cause thereof say:

1. That upon plaintiff's complaint and affidavits alone the plaintiff has no cause of action for the injunction as granted by said judge.

2. The said defendants move to dissolve said injunction upon the whole case, and for cause thereof say that there were no facts existing at the time of the granting of the injunction, nor since that time, justifying the allegations of the complaint or justifying the action of the judge in issuing said injunction.

HILL & BRIZZOLARA,
Att'ys for Def'ts.

(Endorsed on back:) Filed in open court July 31st, 1899. Thomas Boles, clerk of the court.

97 *Motion to Postpone.*

In the United States Circuit Court for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS, Plaintiff, vs. KANSAS & TEXAS COAL COMPANY ET AL., Defendants.	Motion for a Full Bench.

Comes the said plaintiff, by her attorney, and moves the court to postpone the further examination and trial of this cause until there is a full bench of judges, because the determination of the case is of great interest to the plaintiff and the citizens thereof, and presents questions affecting their rights to such an extent as to make it desirable that the decision when made should inspire confidence.

There is a good deal of feeling and interest prevailing in the western part of the State, and the decision of this case creates much anxiety.

Therefore the State of Arkansas respectfully requests the judge presiding in this court to make an effort to procure the attendance of his associate judges at as early a date as possible, and that the whole cause, including the motion to remand, be reserved for the decision of the full court.

BEN. T. DU VAL,
Attorney for the State of Arkansas.

(Endorsed on back:) Filed in open court Aug. 9, 1899. Thomas Boles, clerk, by Florence Hammersly, D. C.

98 *Motion to Postpone.*

In the Circuit Court of the United States for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS, Plaintiff,
vs.
KANSAS & TEXAS COAL CO. ET AL., Def'ts.

Comes Ben. T. Du Val, attorney for the plaintiff, and says that he is not prepared to proceed in the trial of the motion to dissolve the injunction granted by Hon. S. T. Rowe, judge of the 12th judicial circuit in the State of Arkansas, in this cause:

First. Because when he proposed to take up the matter before this court arising upon the motions he believed that the motion to dissolve would be based upon the record and papers and that no oral testimony would be introduced.

Second. Because he believed the question of the jurisdiction of this court would first be decided before the other motions would be taken up, and hence now State is not prepared with witnesses at this time; that he was not employed as attorney in this cause until July 31, 1899, and had no previous connection with it as attorney and has not had time to prepare the case on the facts.

Third. Because the decision of the motion to dissolve will virtually dispose of the whole case, and under the laws providing for removal of causes from State courts to this court this case would stand for trial at the next term.

Fourth. Because he has requested the court to reserve this cause for trial until an opportunity is afforded to procure the attendance and presence of the other judges which will afford time for preparation in case the cause is not removed.

BEN. T. DU VAL,
Att'y for Plaintiff.

Ben. T. Du Val says he believes the statements in the foregoing motion to be true.

BEN. T. DU VAL.

Sworn to in open court Aug. 9, 1899.
[SEAL.]
THOS. BOLES,
By H. B. ARMISTEAD,
Dep. Ct. Cl'k.

(Endorsed:) Filed in open ct. Aug. 9, 1899. Thomas Boles, cl'k, by Florence Hammersly, D. C.

99 *Replication.*

In the Circuit Court of the United States for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS, Complainant,
vs.
KANSAS & TEXAS COAL COMPANY and ST. LOUIS & San Francisco Railroad Company, Defendants. } Replication.

This repliant, The State of Arkansas, saving and reserving all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto saith that she doth and will aver, maintain, and prove her bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in law to be replied unto by this repliant; without th*at*, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

BEN. T. DU VAL,
Solicitor for Complainant.

(Endorsed on back:) Filed in open court Sept. 14, 1899. Thomas Boles, clerk, by Florence Hammersly, D. C.

100 In the United States District Court for the Western District of Arkansas.

AUGUST 9, 1899.

W. L. WARNER, being first duly sworn, testified as follows:

Q. Your name is W. L. Warner?
A. Yes, sir.
Q. You are the deputy sheriff of Sebastian county?
A. Yes, sir.
Q. Do you remember going down to the train about a month or two ago when some miners were brought into this county by the Kansas & Texas Coal Company and of seeing those men?
A. Yes, sir.
Q. Do you remember the date, Mr. Warner?
A. No, sir; I don't. I made no note of it and don't think I remember.
Q. About when was it?
A. It strikes me that it was some time in May.
Q. May or June, was it not?

A. I think it must have been the latter part of May, as well as I remember; I am not positive.
Q. Where were the men when you saw them?
A. On the train.
Q. The St. Louis & San Francisco train?
A. Yes, sir.
Q. Do you know where they came from?
A. I don't know that I do.
Q. They were brought in on the Cannon Ball which arrives here from St. Louis, were they not?
A. Yes, sir. I don't know whether they came from Alabama or Tennessee. It strikes me it was one or the other of those places.
Q. That is, the men told you it was one of those States?
A. Yes, sir; that's my impression.
Q. At any rate, they came in on the Cannon Ball?
A. Yes, sir.
Q. Did you go in and look at those men and talk to them?
A. Yes, sir; I did.
Q. How many were there, do you remember, Mr. Warner?
A. I think there was twenty-seven.
Q. White men?
A. Well, there was one negro in the coach I went in;
101 whether I counted that one in with the 27, I don't remember, but there were either 26 or 27 whites.
Q. Were the men armed?
A. If they were I didn't see anything of that kind.
Q. You looked for that purpose, didn't you? That is, for the purpose of ascertaining that?
A. Yes, sir.
Q. Were any of them infected with any contagious or infectious diseases that you could discover?
A. No, sir.
Q. Did you look to see?
A. Yes, sir.
Q. Did they appear to be an average healthy-looking set of men?
A. Yes, sir; they did.
Q. Did they bear the appearance of being of a very low and depraved type of humanity?
A. I was not so impressed.
Q. How were you impressed?
A. I was impressed that they were a fair class of men.
Q. Did you learn where they were going to?
A. They were going to Huntington.
Q. For what purpose?
A. For the purpose of engaging in mine-work.
Q. Of the Kansas & Texas Coal Company?
A. Yes, sir; that is what they told me.
Q. They were coal miners, were they not?
A. Yes, sir.
Q. Told you that they were?
A. Yes, sir.

Cross-examination.

By Col. B. T. Du Val:

Q. Where did you say they were going?
A. To Huntington, they told me.
Q. You say they were all white but one in that coach?
A. There was one negro sitting back in the coach, and I asked him where he was going, and he said to Huntington, and I asked him if he was one of the miners and he said he was.
Q. At whose instance did you make that inspection?
A. At the instance of Mr. Hill and Mr. Brown.
Q. For what purpose?
A. For the purpose, as he explained it to me, to see whether they were infected with any of those diseases—that is, the best I could. I am not a judge; I only could judge from their general appearance, and that I told them.
102 Q. Did you inspect them as to their health?
A. No, sir; I never examined them; only judged from their general appearance.
Q. You are not a physician, are you?
A. No, sir.
Q. All you did was to make a casual examination in the coach?
A. That's all, Colonel.
Q. And that was done at the instance of the supt. of the Kansas & Texas Coal Company and his attorneys?
A. Yes, sir.
Q. Do you know what became of these miners?
A. No, sir; I don't.
Q. Did you ever see any of them afterwards?
A. Never did that I know of.
Q. Do you know whether they are at the Huntington mines now or not?
A. No, sir; I don't.
Q. That's all.

Redirect examination.

By Mr. Hill:

Q. When you were requested to make this inspection I will ask you if your attention was not specifically directed to Judge Rowe's injunction?
A. It was.
Q. And you were requested to see whether any of these men fell within the prohibited class of this injunction?
A. Yes, sir.
Q. That was the purpose of your visit there?
A. Yes, sir.
Q. At the request of the attorneys and superintendent of the Kansas & Texas Coal Company?
A. Yes, sir. If you remember, I told you I was not a physician

and could only tell by their appearance, and that their appearance was that of healthy men.

Q. You were further advised by the attorneys of the coal company that if you thought it wise to do so we would be glad if you would take a member of the board of health there with you?

A. Yes, sir; that was spoken of.

Q. That's all.

103 BENNETT BROWN, being first duly sworn, testified as follows:

Q. Your name is Bennett Brown?

A. Yes, sir.

Q. What position do you hold with the Kansas & Texas Coal Company, Mr. Brown?

A. Superintendent at Huntington.

Q. Were you, during the months of March, April, May, June, July, and so far in August, local superintendent of the mines at Huntington?

A. I was.

Q. Prior to April 23, in the year 1899, did the Kansas & Texas Coal Company import into the town of Huntington any miners?

A. They brought into Huntington prior to the 23rd day of April sixteen miners.

Q. About when were they brought in?

A. About the 20th.

Q. Prior to that importation, had any been imported by the company this year?

A. Not this year that I remember.

Q. I wish you would state to the court the general character of those men who were imported prior to the 23rd day of April.

A. So far as I know, their character was good.

Q. What were they?

A. Colored men.

Q. Miners?

A. Yes, sir.

Q. Practical miners?

A. Yes, sir.

Q. Where did they come from?

A. Iowa.

Q. For what purpose did they come to Huntington?

A. To mine coal.

Q. Was any contract made with them before they came to Huntington that they were to come there and mine coal?

A. If you might call it a contract to engage a man's services for that purpose, then there was a contract made.

Q. That's a pretty good definition of a contract, I think, Mr. Brown. Their services were engaged in Iowa to come to Huntington to mine coal there?

A. Yes, sir.

Q. Those were the facts?

A. Yes, sir.

Q. How were they brought to Huntington—over what line of road?
A. Over the Frisco road.
Q. By that you mean the St. L. & San Francisco R. R.?
A. Yes, sir.
Q. Brought from the State of Iowa over that road?
A. They come — St. Louis on their way from Iowa over that road.
104 Q. Were those men armed when they came to Huntington?
A. Not to my knowledge.
Q. Did you see them?
A. I did.
Q. Where did you meet them?
A. *St.* Fort Smith here.
Q. Went from Fort Smith to Huntington with them?
A. I did.
Q. If they had been armed you would have had an opportunity of discovering it, would you not?
A. They didn't have any arms.
Q. You know that?
A. Yes, sir; I know that.
Q. Were they infected with contagious or infectious diseases?
A. Not to my knowledge.
Q. They live there at Huntington, don't they?
A. Yes, sir.
Q. Any diseases spring from their ingress into the town?
A. No, sir.
Q. They mingled with the people in the town?
A. Not to any great extent.
Q. They mingled with the other miners?
A. Yes, sir.
Q. Did any diseases follow their ingress among them?
A. No, sir; not to my knowledge.
Q. Were these men of the low and lawless type of humanity?
A. Not any more so than I am.
Q. I am not taking judicial cognizance of what you are.
A. They were men who worked for their living, just as I do, and conducted themselves properly as long as they were employed.
Q. Came there to work and did work?
A. Yes, sir.
Q. And behaved themselves?
A. Yes, sir.
Q. Some of them there now?
A. Yes, sir.
Q. Some of them testified in contempt cases in this court, didn't they?
A. Yes, sir.
Q. Do you remember who they were?
A. I don't believe I remember their names. I think Dave Kefford was one of them.
Q. Was not that negro, Harrison, one of them also?

A. No, sir; he came from the Jellico district—from Tennessee. He came later.

Q. On the 23rd day of April was it the purpose and intention of the Kansas & Texas Coal Company to import and bring into Huntington a large number of armed men of the low and lawless type of humanity?

A. Not to my knowledge.

Q. You would have had knowledge of that fact if it existed on the part of the company?

A. Doubtless I would.

Q. Was it the purpose of the company at that time to import men here?

105 A. It was.

Q. For what purpose?

A. To mine coal.

Q. What class of men was it their purpose and intention to import here?

A. Able-bodied workmen and experienced miners.

Q. Was it the intention or purpose to arm those men and bring them into the State of Arkansas as armed men?

A. It was not.

Q. Was there any action taken on the part of the coal company to see that the men did not come armed?

A. I do not know that there was any special efforts made upon the part of the company to see that they did not come in armed, because the presumption would be that the men would not have any arms to begin with.

Q. You didn't expect that they would be armed?

A. Certainly not.

Q. And it was no part of the business or intention of the company to arm them?

A. Not any.

Q. Was it the purpose and intention of the company to bring in any men afflicted with contagious and infectious diseases or from places where contagious and infectious diseases were prevailing?

A. Certainly not.

Q. After that day, April 23rd, has your company imported men into Huntington?

A. It has.

Q. Can you estimate about what number?

A. I believe the total number it has imported since that time is between 200 and 250.

Q. That is, from the 23rd of April up to the present time?

A. Yes, sir.

Q. What has been the general character of the men that have been imported?

A. Fair average workingmen.

Q. Have they been armed?

A. No.

Q. Have they been of a low type of humanity?

A. Not to my knowledge.

Q. Have there been any of them infected with diseases that would cause the spread of contagious and infectious diseases in your community?

A. No, sir.

Q. They have been working?

A. Yes, sir.

Q. And came there to work and have worked?

A. Some of them have worked and some have not.

Q. How many have not worked?

A. Probably 25 per cent. of them have not worked any at all. Some have worked a little and some are working now.

Q. Without going into detail, can you state in general terms why 25 % of the men brought there did not work?

A. According to their own statement, they were afraid to work.

106 Q. They came there for the purpose of working, but were afraid on account of the strike situation?

A. Yes, sir.

Col. Du Val: He didn't say that. He said they were afraid.

Witness: When I mean they were afraid, there was a general impression conveyed to them that they were not safe from molestation and violence on the part of the men who were not at work and didn't want to work under the conditions.

Q. These men that have been brought in since the 23rd of April, have they been brought under like circumstances and conditions as to the prior engagement of their services as those that were brought before that date?

A. Just the same.

Q. Brought under agreement or contract with them made in other places to come to Huntington and mine coal?

A. Yes, sir; all of them have been engaged by agents of the company to come to Huntington to mine coal.

Q. Where were those men brough- from?

A. Various places.

Q. Were any brought from the State of Arkansas?

A. Very few. I believe I have taken one or two, or perhaps three, from Fort Smith.

Q. I mean this importation that came in on the train.

A. No, sir.

Q. These importations that I have been asking about have been from other States than Arkansas?

—. From other States; yes, sir.

Q. Were these men who were brought in citizens of the United States, or were they foreigners?

A. Principally citizens of the United States, and I should say country-born.

Q. Born in the United States and from various portions of the United States?

A. Yes, sir.

Q. None of these importations that have been made have been

from any other portions of Arkansas except the few men you have picked up in Fort Smith and took down?

A. No, sir.

Q. Have all of them that — been imported from other States been brought in there over the St. Louis & San Francisco road?

A. All of them; yes, sir.

Q. And have come into the State of Arkansas, having gotten on that road at some point without the State of Arkansas?

A. Yes, sir.

107 Cross-examination.

By Col. Du Val:

Q. You say that the company had no intention of introducing a class of persons referred to in the question of Mr. Hill? You stated that you knew the company had no intention of bringing in any such class of people as are spoken of in the injunction?

A. I said so; yes, sir.

Q. What are your means of knowing what the intentions of the company are?

A. My means of knowing what the intentions of the company are is because we want men in there who can perform service for the company in the way of mining coal, and those people enumerated in the injunction would be of no service to us whatever in that direction.

Q. Have there not been some people brought to that mine from outside of the State in other ways than by the St. Louis & San Francisco road?

A. Not any to my knowledge.

Q. Has there not been a body of men brought there to work in the mines by way of the Choctaw road across the country?

A. There never has been.

Q. You state that positively, do you?

A. Yes, sir; I state that positively.

Q. Now, when these men came here that you speak of, are they not put inside of a stockade?

A. There was never any stockade except in the imagination of our enemies.

Q. Was there not a high wire fence?

A. No, sir.

Q. When was it taken down?

A. It has never been taken down; it is there yet.

Q. How high is it?

A. 3 or 4 feet high.

Q. When you brought those men at first were they not armed by the company?

A. They were not armed by the company.

Q. None of them that have been brought there?

A. None of them at the time they were brought in.

Q. I mean after they got there at the mines, were not arms put in their hands?

A. In some instances there has been.

Q. How many?

A. I cannot say.

Q. Well, now, as to those first sixteen, you testified that they were peaceable and industrious. I will ask you if while they were there one of them did not get his eye knocked out by another.

A. He had his eye injured in a fight with another.

108 Q. Do you know whether or not some of those men were ex-convicts from the penitentiary in some other States?

A. If they were it would not make any difference with me. A man could be in the penitentiary and make a perfectly good citizen afterwards.

Q. It is not generally the fact that they are good citizens afterwards?

A. I do not want to go into generalities, but I would not have any hesitancy about taking the hand of a man who had once been in the penitentiary if he conducted himself properly afterwards.

Q. That is your private opinion, but have you had much experience with men who had come out of the penitentiary and made good citizens afterwards?

A. I have not had much experience in that direction.

Q. I thought so, or you would not be so positive. You were present when Mr. Warner testified in regard to this lot of miners that he inspected in the cars down here at the depot, were you not?

A. Yes, sir.

Q. Are they at Huntington now?

A. Some of them are.

Q. How many remained there?

A. Four or five—five, I believe; four white and one colored.

Q. One of the 27?

A. Yes, sir.

Q. Did the others ever go to work?

A. Never went to work; no.

Q. And they were a better lot than you were in the habit of importing?

A. Didn't prove so to us.

Q. You say that because they didn't go to work; but in their appearance and general make-up they were rather above the ordinary standard?

A. Well, they were white.

A. I am not speaking of color. Were they not better than the others brought in?

A. Not any better.

Q. Then why did you take the sheriff down there to inspect that lot and not to inspect any others?

A. Do you mean in the train here? I thought you had reference to another matter. I beg your pardon. We took the sheriff down to the train to examine those men because I had pledged my word to the sheriff that I would not bring any men into Huntington without giving him an opportunity or his deputies to examine them and see that they did not come within the prohibited class specified

in the inunction. That is the reason we asked the sheriff to go down.

Q. Was any other lot inspected by the sheriff?

A. Not to my knowledge.

109 Q. Was he ever asked to inspect them?

A. I don't know that he was. The reason why the sheriff and his deputies were not asked is because the sheriff did not seem to take any interest in the matter—did not care whether he was asked or not, and took no interest in the matter.

Q. There was nothing obligatory upon you to ask him?

A. Only so far as my word was concerned.

Q. Then you gave him the opportunity, and after you did give him the opportunity he did not manifest any further interest?

—. No, sir; he did not. We telephoned him to come up from Greenwood and he did not do so, and took no steps in the matter, and I concluded that if he didn't care we didn't.

Q. And that's the only lot you gave him notice of?

A. Yes, sir; the only lot we gave him notice of.

Q. Do you know Albert Evans?

—. I do; he worked in the mines.

Q. What batch of laborers was he imported with?

A. Do you mean where did he come from?

Q. No; when did you bring him there?

A. We brought him with that other lot; I can't remember the date.

Q. After the 16 or 27 lot?

A. After the 27 lot.

Q. Do you know where he came from?

A. Down in Tennessee; what they call the Jellico district, I believe.

Q. Do you know whether he was an ex-convict or not?

A. I do not.

Q. Where is he now?

A. In jail.

Q. The city jail?

A. The county jail at Greenwood; that is the last place I heard of him being.

Q. What is he charged with?

A. Charged with assault with intent to kill.

Q. Upon whom?

A. Upon the city marshal of Huntington.

Q. That was one disorder that grew out of the bringing him there—one violation of the law?

A. I am not prepared to go that length.

Q. He is indicted, is he not?

A. Yes, sir; but many a man has been indicted when he was innocent.

Q. But all men who are indicted are not innocent, are they?

A. No, sir; and neither are all men that are indicted guilty.

Q. Are there any other of these persons you brought in there in the county jail?

110 A. I understand that a relation of his, cousin or brother-in-law, is in there, too.

Q. He is one of the miners imported since the 23rd of April?

A. Yes, sir.

Q. I will ask you if you know whether the general reputation of miners in this Jellico district is that of being ex-convicts and a bad class of men.

A. I know nothing whatever about it.

Q. You have never heard anything about it?

A. Oh, yes; I have heard a good deal about it here in the State court.

Q. Never heard from anywhere else?

A. No, sir.

Q. It is true that the agents of your company sent men there for the purpose of procuring miners?

A. That is a fact.

Q. You make no difference whether a man is a criminal or not or otherwise, so that they are healthy and able-bodied?

A. I cannot say what they do. I could testify to the instructions the agents get, but whether they follow the instructions or not I am not able to say.

Q. Who gives them the instructions?

A. The president of the company.

Q. Do they go through you?

A. No; not through me; they originally come from me.

Q. You suggest to the company the class of men you want?

A. Yes, sir.

Q. And who is it instructs the agents of the company where men can be procured? The question of their being honest or dishonest or convicts or ex-convicts is not one of the things that they are to guard against or inquire into?

A. Not particularly about being an ex-convict, but particularly about them being healthy and able-bodied men and men who are experienced and practical coal miners.

Q. That is all the instructions?

A. That's the general trend of the instructions.

Q. The question as to whether they are of the lowly class or whether they are immoral or dishonest is not a question for inquiry?

A. No; we don't particularly inquire into a man's honesty. We take it for granted that he is an honest man until we find out he is a thief.

Q. Now, this class of miners that I speak of, this Jellico District miners, ex-convicts, etc., do they make good miners?

A. Some of them do and some of them don't.

111 Q. Well, you have quite a number of them employed in the mines now, have you not?

A. Yes, sir; quite a number.

Q. How do they average?

A. Well, I would not say that they average up very well. As producers they are rather below the average. I might qualify that

statement by the fact that the men, a part of them, have not been physically able to work on account of ill health brought on by climatic changes, change of water, and things of that kind, affected with malarial trouble, and that has to some extent destroyed their capacity to work for the moment.

Q. How many miners have you now employed—about how many?

A. If the court will excuse me, I don't think that that is a proper question to ask me.

A. All right if he refuses to answer; I have no objection. He said he introduced about 200 to 250, and I wanted to know what per cent. of them remained. You said about 25 per cent. of them remained?

A. No, sir; I said that 25 per cent. of them never started to work.

Q. How many of them have quit?

A. I cannot say.

Q. I will ask you if there are not quite a number of these who have been imported who are anxious to get away.

A. They have never expressed themselves so to me.

Q. Have not a considerable number of them called on the company to furnish transportation back to where they came from; that they were not able to get off?

A. Yes, sir; one of these twenty-seven that came after he had gone away and worked on the railroad somewhere for two weeks came back and demanded that I give him transportation back to where he came from, and I told him to wait a little while and I would see about hiring a Pullman palace car to take him back. That is the only one who came to me for transportation; some came through Mr. Burke, their agent.

Q. How many did he represent that he was calling on you for aid to return?

A. I don't know that he specifically stated the number. He said that it was those white men that had been brought in that he was acting as agent for.

Q. They claimed that the company should furnish them transportation back to the place they came from?

A. Yes, sir; or back to Alabama or some other place.

112 Q. Did you get the Pullman palace car?

—. No, sir; I did not.

Q. And so none of them have been furnished by the company with means to get back where they came from?

A. They violated their obligation to the company and the company did not see that it was under any obligation to men who had violated their obligation to it; not a bit.

Q. I believe that's all.

Redirect examination:

By Mr. HILL:

Q. It is true two of your men are in jail under indictment? You are familiar with the facts growing out of that indictment against them, are you not?

A. Only what I heard in the court-room.

Q. From your knowledge and information of it, was your workmen the ones who violated the peace or was it the town marshal?

A. I would say it was the town marshal.

Q. I believe Col. Du Val asked you something about a man getting his eye hurt. Was that any lawless display of violence?

A. When one man's fist comes up against another one's eye I would consider that the natural result.

Q. It was a regular fisticuff fight, then?

A. Yes, sir.

Recross-examination.

By Col. DU VAL:

Q. The cases of these men in the jail there were investigated here, were they not?

A. Yes, sir.

Q. And they were remanded by the State court?

A. Yes, sir; but they were not indicted for the charge that was investigated in this court. The charge against them in this court was for resisting arrest and assault with intent to kill Mr. Bunch. I understand that they are indicted, not for resisting arrest—that charge was withdrawn—nor not for assault with intent to kill Bunch, but assault with intent to kill the town marshal.

Q. But it all grew out of the same transaction?

A. Yes, sir; but, you see, the charges were different.

—. ——.

A. Yes, sir.

113 Redirect examination:

Q. When you wanted the sheriff to inspect these men, or offered to the sheriff the opportunity to inspect them, did you not couple that with the request that he furnish protection to them, and that if he would furnish protection to the men you would import that you would notify him of the arrival of every man you brought in?

A. I did; yes, sir.

Q. And the first men you brought in you did notify him?

A. I did.

Q. And his deputies went there and inspected, but not under the sheriff's direction. That was at the request of yourself and your attorneys?

A. Yes, sir.

Q. And the sheriff failed to furnish you protection at the time,

didn't he, & you felt under no obligations to bother him further, so to speak?

A. Yes, sir; for the little interest that he took in the matter.

Recross-examination:

Q. Regarding this assault upon the town marshal, or this occurrence, were you present?

A. No, sir; I was not.

Q. Where were you at that time?

A. I think I must have been uptown in my office when that occurrence took place.

Q. That's all.

Witness excused.

Endorsed on back: Filed August 9th, 1899. Thomas Boles, clerk.

114 In the Sebastian Circuit Court for the Fort Smith District.

STATE OF ARKANSAS *ex Rel.* JO. JOHNSON, Prosecuting Attorney,
vs.
KANSAS & TEXAS COAL COMPANY and ST. LOUIS & SAN FRANCISCO Railroad Company.

Testimony of F. E. Doubleday.

Before his honor Styles T. Rowe, judge of the circuit court of the twelfth judicial circuit of Arkansas.

Appearances: For the State, Jo. Johnson, prosecuting attorney; J. S. Little, Edgar E. Bryant, Ben. T. Du Val; for the K. & T. Coal Co., Hill & Brizzolara; for the St. L. & S. F. R. R. Co., B. R. Davidson.

April 27, 1899.

115 F. E. DOUBLEDAY, having been duly sworn upon behalf of the Kansas & Texas Coal Company, was examined in chief by Mr. Jos. M. Hill and testified as follows, to wit:

Question. What is your name?

Answer. F. E. Doubleday.

Q. Where do you live?

A. Pittsburg, Kansas.

Q. What is your position with the Kansas & Texas Coal Company?

A. General superintendent.

Q. Does your duty as general superintendent require you to investigate the situation at the various mines of that company?

A. Yes, sir.

Q. You know of the strike, of course, having occurred the first of March at your mines in Huntington?

A. Yes, sir.

Q. Have you been there frequently since that time?
A. Yes, sir.
Q. Are you familiar with the situation there?
A. Fairly so.
Q. Endeavored as best you could to learn it, I suppose?
A. Yes, sir.
Q. Now, in your own way, just state the situation to the court, as you have understood it there, with regard to the men quitting, and your difficulty in getting labor to take their places in the mines and work the mines.
A. The miners in our company's employ at Huntington, they stopped work, I think, on the 28th of February, and the mines have been practically idle since that time. I suppose we have had at different times—I think nearly every day there have been some men at work. I don't know what the smallest force has been—probably six or eight men—and at this time, I suppose, there is in the neighborhood of thirty men at work.
Q. There has been an effort on the part of the company at all times to keep the mines running?
A. Yes; we attempted to get some coal.
116 Q. Have you had difficulty in retaining the men that you did have?
A. Yes, sir.
Q. What was your information as to the cause of that difficulty in retaining them?
A. My information, of course, is reports; it is nothing I have seen myself.
Q. I am just asking for your information on that.
A. That efforts have been made to stop the men that wanted to work; efforts have been made to prevent the men from working.
Q. And they have been, in the main, pretty successful in preventing them from working?
A. Yes, sir; there has been no large number at work.
Q. How many men does it require to work your mines down there to the full capacity?
A. Between 450 and 500 men.
Q. How many were you working on the first of March or prior to the first of March?
A. I should say in the neighborhood of 400.
Q. Since that time, I believe you say, forty or fifty or something like that have been all you have had?
A. I don't think we have had over thirty at one time.
Q. And that has been in the last few days?
A. Yes, sir.
Q. Prior to the time you imported these negro miners, how many was the most you ever had at work at any one time?
A. I think less than fifteen.
Q. Why did you find it necessary to bring any miners from a distance?
A. A large number of the miners that were at work in our mines

before the first of March had left Huntington, and those that were there did not report for work, and we wanted to produce some coal.

Q. You have been ready to take these miners at work—that is, your old miners at work—at all times, I presume?

A. Yes, sir.

117 Q. You are now?

A. Yes, sir.

Q. You were unable to get them, and then you sought labor elsewhere?

A. Yes, sir.

Q. Had you any purpose in seeking negro labor in preference to seeking white labor?

A. No, sir.

Q. Is there any reason why it is more difficult to get white labor under the circumstances than it is negro labor?

A. I don't know that there is any reason for it.

Q. Are those all you have been able to get—those you have now?

A. We have only taken, I think, about 16 or 17 down there.

Q. They were mostly negroes?

A. Yes, sir.

Q. Do you know whether the negroes, as a general thing, are union miners?

A. No; as a rule, I don't think *they* are as many among the negroes as there are among the white men.

Q. Therefore, in case of a strike you naturally get more negro miners, because there are more non-union miners among them?

A. Yes, sir.

Q. At Huntington, however, do you know whether the negroes belong to the union or not?

A. I understand that some of them do.

Q. When you got those miners here—you brought them in about a week ago I believe it has been shown?

A. Yes, sir.

Q. Did you see them?

A. Yes, sir.

Q. Where did you see them?

A. I saw them at Fort Smith first. I got on the train here. I saw them between here and Jenson.

Q. Did you explain the situation to them down there?

A. Yes, sir.

Q. You and Mr. Brown together?

A. Mr. Brown did.

118 Q. In your presence?

A. Yes, sir.

Q. Explained the situation exactly as it was?

A. Yes, sir.

Q. Were those men armed?

A. I think not.

Q. You saw no signs of it?

A. No, sir; I did not.

Q. You saw no signs of it?

A. No, sir; I did not.
Q. Did you have any reason to believe they were armed?
A. I did not.
Q. Were they in charge of any guards?
A. No, sir.
Q. Who was with them?
A. Mr. Jones, from North Missouri, a locomotive engineer in our company's employ there.
Q. What is he doing now? Is it his business to look after miners?
A. No, sir; he has returned to his home. I suppose he is running his locomotive.
Q. He was temporarily working for the company in this service?
A. Yes, sir.
Q. And brought them down?
A. Yes, sir.
Q. The men understood the situation when they went there, and went there voluntarily?
A. Yes, sir.
Q. They have been at work in the mines since?
A. It is my understanding they have. I have not been at Huntington for 2 or 3 days—that is, I have not been at the mines.
Q. Are they miners—men who have worked in the mines before?
A. Well, I think they have. I talked to some of them, and from the information—they told me the places they worked. Some of them told me they had worked in this company's mines at other places.
Q. You believed them and took them as *bona fide* miners?
119 A. Yes, sir.
Q. Were any of them affected with infectious or contagious diseases, to your knowledge?
A. No, sir; not to my knowledge.
Q. What would be the effect of the company introducing such a class of miners as that down there on your own interests?
A. It would be very disastrous.
Q. I suppose you would be very careful in guarding such a point as that?
A. We certainly would; yes, sir.
Q. I suppose it is very far from the intention of the company to do anything of that kind knowingly?
A. Yes, sir.
Q. Is it the intention of the company to gather up lawless men of a low type of humanity?
A. No, sir; it is not; on the other hand, we undertook to use extraordinary care in procuring men that will work.
Q. The purpose of working them in the mine is to get out coal?
A. Yes, sir.
Q. That is what you are after, to get the best men you can to do that work?
A. Yes, sir.

Q. Have you any other purpose except to get men to work these coal mines?

A. None whatever.

Q. Is it the purpose of the company to use its utmost efforts to get a full complement of men to work its mines?

A. Up to the number that is required to produce the coal that we have a sale for.

Q. What is the extent of the loss, if you could estimate it, of this stoppage of your mines at Huntington?

A. I can hardly estimate it, Mr. Hill.

Q. Has your company large contracts outstanding for supplying coal?

A. Yes, sir.

Q. What are you doing with those contracts?

A. We are not filling them.

120 Q. You are losing a large amount of business?

A. Yes, sir.

Q. Do you think that the loss in dollars and cents is great by this stoppage?

A. Yes, sir.

Q. Does it run into the thousands of dollars?

A. I should think so.

Q. And to avoid that situation it is the purpose of the company to get the men, if it can, to operate these mines?

A. Yes, sir.

Q. Has it any other purpose in view, to your knowledge?

A. No, sir.

Q. Other than to operate these mines and carry out its contract and produce the coal?

A. That is all.

Q. Were you with Mr. Brown or were you present at the time the request was made on the sheriff to give protection to your property and miners down there?

A. I was with Mr. Brown here in the court-house when he was talking with Mr. Herrell over the telephone.

Q. I do not care to go into the details with the matters with Mr. Herrell. I believe there is no misunderstanding between the gentlemen as to what took place. I just want to know if you know generally of a request made on the sheriff for protection.

A. Yes, sir.

Q. You regarded that protection as necessary to protect your men down there and your property, did you?

A. Yes, sir.

Q. Where were these threats coming from? From what source?

A. I suppose from the striking miners. None of them ever made any threats to me.

Q. That was your information?

A. Yes, sir.

Q. The object of these threats was to prevent the importation of other labor, was it not?

A. Yes, sir.

121 Q. That was your understanding of it?
A. Yes, sir.
Q. You intended to bring other miners here on Monday, I believe?
A. Yes, sir.
Q. Did you see these men that were coming here?
A. Yes, sir.
Q. Were they infected with any loathsome or contagious or infectious diseases?
A. I don't think they were.
Q. You saw them?
A. Yes, sir.
Q. Where did you see them?
A. At Monett, Missouri. I saw them in the railroad yards and right in front of the passenger depot. They had their windows all up and hanging out of the windows.
Q. Pretty fair-looking set of negroes?
A. Yes, sir; they were. They were above the average, I think.
Q. Were they all nrgroes?
A. No, sir; they were not all negroes. My understanding is there was about thirty men, and five were white men; twenty-four or twenty-five colored men and about five white men.
Q. Where did you send them?
A. At our mine near McAlester, Cherryvale, Indian Territory.
Q. Mines owned by the company?
A. Yes, sir.
Q. Are they at work out there now?
A. Yes; so I am informed.
Q. Were they a well-behaved, decent set of men, so far as you could see?
A. Yes, sir.
Q. Do you know whether they were armed or not?
A. I don't think they were. I wasn't in the car.
Q. Did you see any ap-earance of it or have any information they were armed?
A. No, sir.
Q. Were any guards with them?
A. No, sir; the only man that was with them was a clerk in our St. Louis office—a young man, I should say, 20 yrs. old.
122 Mr. JAMES BRIZZOLARA (of counsel for K. & T. Coal Co.): Any Pinkertons?
The WITNESS: No, sir.
Mr. JAMES BRIZZOLARA (of counsel for K. & T. Coal Co.): With Winchesters and double-barreled shotguns?
The WITNESS: No, sir.
Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): Why did you divert them from here down there?
A. I understood that Sunday afternoon, or Sunday night—in the first place, I understood Sunday afternoon that the governor had instructed the sheriff not to permit any colored miners to be taken into this county, and later in the evening I understood that there

were men from Bonanza that were patrolling the railroad from Bonanza to Jenson, and after taking counsel I recommended to our people that these men be diverted to some other place.

Cross-examination.

Mr. Mr. J. S. LITTLE:

Q. I will compliment you on doing one good thing anyhow—keeping those fellows out of here last Sunday evening. It saved us some trouble at least, I hope. You spoke about these miners. You understa*m*d they are at work in the Territory. Do you know whether they have sued the company for getting them in here—whether they have filed any suits against the company—these 30 miners that went up there?

A. No, sir; I have not heard it if they have.

Q. How many had you arranged for with reference to these 30? Had you had any others engaged at that time for importation?

A. We had information Saturday that there would be 70. It was a telegram. I never had any confirmation of the telegram, and never have found out whether it was simply a mistake in the telegram or whether our people expected to get 70 and only got 30, but on Saturday we expected 70, and when we heard of them Sunday there were 30.

Q. Has there been any since that time? Is there any arrangements made for additional miners to be shipped in here by the company?

A. No, sir.

Q. Does the company intend to do so, if not restrained by the court?

128 A. Well, I can't answer that question.

Q. I believe you attested the petition in the Federal court?

A. Yes, sir.

Q. You swore to it?

A. Yes, sir.

Q. I will ask you if you didn't state that the company had shipped in about 16 miners and were intending to ship in about 400 more.

A. Yes, sir.

Q. You don't know whether they have any additional arrangements consummated at this time or not?

A. No, sir; I don't know.

Q. What point in Kentucky did those negroes come from; do you know?

A. From Jellico, I think.

Q. Do you know whether that mine has in part, or largely, been worked by convict labor in Jellico, Kentucky?

A. I don't know.

Q. These men at Monett, did you go through the car and see them?

A. No, sir.

Q. You just saw their heads sticking out?

A. Yes; I just walked along by the side of the coach.

Q. You don't know whether they were armed or not?
A. All I know is what I could see from the outside.
Q. You didn't see any arms?
A. No, sir.
Q. You don't know what they had around their persons or what was laying in the car, or anything of that sort?
A. No, sir.
Q. Do you know, of your own personal knowledge, whether there were any guards with them—other men outside of the miners themselves; any men—Pinkertons, we call them sometimes?
A. Yes; I know there were not.
Q. How did you learn that?
124 A. I know it in this way: that I would have been advised by our people. I was advised by our people of the arrangements they had made to move these men out here. If they had any Pinkerton men they would have advised me.
Q. You had been advised at that time of the probable trouble if they come in, were you not, when they come in?
A. At what time?
Q. This car-load of hands at Monett. At the time they should arrive here were you not anticipating there would be trouble over that or liable to be, to say the least?
A. Well, I would not say——
Q. (Interrupting.) Wasn't you anticipating there was a strong probability of trouble?
A. I would say there was a possibility of it.
Q. Considerable of a possibility, wasn't there? I suppose that is the reason you got the injunction or you would not have bothered about that. Was it your idea to have shipped in here thirty of these defenseless and harmless negroes, with nobody to protect them and having no guns themselves, and t-row them out in front of these turbulent miners to take their chances? Was that your idea in not bringing them in armed?
A. We brought 16 in in that way.
Q. That was before the thing got hot?
A. We had got the injunction.
Q. You got it Sunday; that is true. You hadn't had it up to that time?
A. No, sir.
Q. Did you expect the injunction to control all these men that quit? You knew there was but one or two officers out there, didn't you?
A. Yes, sir.
Q. How did you expect them to be defended if you got up a riot there?
A. We expected that the people would obey the order of the injunction.
Q. It wasn't "again" everybody. It wasn't "again" hanging negroes generally. Do you know what arrangements the company made for arms, guns, six-shooters, and Winchesters, and so on?

125 A. No, sir; I do not.

Q. What was the object of that wire fence? I never heard of that sort of a stockade before. Was that to keep the cows off, or what for?

A. It was to keep off intruders and to show people—to enclose that property.

Q. That that was "ours"?

A. That that was ours; yes, sir.

Q. Too good to be walked upon out in the woods?

A. Yes, sir.

Q. You stated that the miners went out, I believe, on the 28th of February, did you not, finally?

A. Yes, sir.

Q. Had they made any overtures to the company or to the operators? I mean, when I say company, to the adjustment or arbitration of these questions or troubles before that time.

A. Why, yes; I think that the miners' union had notified the company——

Q. Hadn't they made two respectable and very proper requests for a conference with the operators here at Fort Smith?

A. As I understand, the miners' union sent out a notice of that kind.

Q. I suppose they have a right to do that.

A. I suppose so; yes, sir.

Q. Your company saw proper to ignore that; didn't meet with them and try to adjust this trouble?

A. No, sir; our company didn't meet with them.

Q. And has not met?

A. No, sir.

Q. Has refused every overture of that sort?

A. I think it has; yes, sir.

Q. And you could not get any white miners. The first you got was these 16 negroes from Des Moines, Iowa, and these thirty more out in Kentucky, and they were not introduced in here for the purpose of forcing——

A. (Interrupting.) They were introduced in here to get coal.

Q. That was the abstract purpose?

A. Yes, sir.

Q. That was the ostensible purpose?

A. Yes, sir.

126 Q. Was it never discussed that putting the negroes in would have a salutary effect on this situation; it would make the miners weaken quicker, or anything of that sort, than it would to put white men in?

A. I don't know as it has been.

Redirect examination.

By Mr. B. R. DAVIDSON:

Q. Did the Kansas & Texas Coal Company have anything to do with the discharge of those 60 men that precipitated this strike?

A. Do you mean the 60 men that was discharged at Hartshorne by the Choctaw Coal Co.?

A. Yes, sir.

A. No, sir.

Q. It had nothing to do with that?

A. No, sir.

Q. Didn't recommend it and had nothing to do with it?

A. No, sir.

Q. That is what precipitated this strike, was it not?

A. I have heard that intimated; yes, sir.

The COURT: Can you explain why it is that your company refuses to treat with the miners if they made overtures to them?

The WITNESS: We are ready to treat with our own men.

The COURT: Why do you refuse to treat with these miners—these parties who have made the overtures?

The WITNESS: Because they are not in our employ.

The COURT: Is it the reason because they are union or non-union men?

The WITNESS: It has nothing at all to do with it. We are ready at all times to treat with men that are employed by our company.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): You do not care whether they belong to the union or do not belong to the union?

The WITNESS: No, sir.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): That cuts no figure?

The WITNESS: No, sir; nor no ice.

The COURT: These men were formerly in your employ, were they not?

A. No; I think some of the men——

127 The COURT (interrupting): These men down here at Huntington—the striking miners?

The WITNESS: Yes, sir; those men are, but this demand was not made by them, as I understand it.

By Mr. Jos. M. HILL:

Q. I will ask you if it is not the object, as you understand it, of this union to get all of the mines on the same schedule, and to control the labor in the various coal mines.

A. Why, yes; I suppose that is the object.

Q. And to fix the price of labor in the various coal mines throughout its district?

A. Yes, sir.

Q. Is that your understanding of its object?

A. I suppose it is. It may have other objects. I don't know that that covers it all.

Q. You do not belong to it, and you have not ridden the goat, and haven't learned all the secrets?

A. No, sir.

Q. Is *it* a secret organization, is it not?

A. That is what I understand.

Q. The condition of mines is very dissimilar, is it not, in different districts?

A. Yes, sir.

Q. In different districts and localities?

A. Yes, sir.

Q. They have attempted here to get a uniform scale for a very large area, have they not?

A. Yes, sir. Well, not exactly. There is a difference in the price.

Q. At the different places?

A. Yes, sir.

Q. The position of the company, as I understand you, is simply that they do not recognize that they have any business with the union? It is not in their employ and they have no connection with it?

A. No, sir; we want to deal with the men that are working for our company.

128 Q. And whenever the men that are working for you have any grievance and want to consult with you, you are always ready to consult them?

A. Yes, sir.

Q. Suppose that some of your workmen would come to you and say, "We come as the Huntington Lodge of United Mine Workers of America," would you receive them?

A. No, sir.

Q. If they come to you and say, "We come as a committee selected by your employees," and complained of this thing and that, would you receive them?

A. Yes, sir.

Q. That is the point you make?

A. Yes, sir.

Q. Why do you draw that distinction?

A. Because we are not interested and do not want to take any part with men that are employed by other companies. We want to deal only with men that are employed by our own company. We prefer not to have other companies interfere with our business and we do not want to interfere with theirs.

Q. You have troubles of your own?

A. Yes, sir.

Q. Would it be possible, in your judgment, to run your mines if you had to run them according to the rules and regulations of the miners' union?

A. We wouldn't want to run them that way; no, sir.

Q. Could you do it and do it successfully?

A. I don't think we could.

Q. That is the judgment of yourself and of all the other officials of the K. & T. Coal Co.?

A. Yes, sir.

Q. And for that reason you refuse to treat with them as a union?

A. Yes, sir.

129 Q. But you are always ready to treat with your employees or former employees?

A. Yes, sir.

The COURT: Suppose that a committee of union striking miners at Huntington were to present themselves and offer to treat—from a lodge of union men—would you refuse to receive them on that account?

The WITNESS: We would only treat with a committee that represented our own men.

The COURT: Couldn't you settle questions as well with a committee of a lodge of union striking miners as you could if they were divested of unionism? What would be the difference?

The WITNESS: If they were a committee from our own mines we would not ask them whether they were union men or not.

The COURT: I want to know why you would ask a committee of these striking miners whether they were union men or not.

The WITNESS: Because we only want to deal with our own men.

The COURT: They were your own men, and they went to treat with you. Now, why did you refuse? Is there any reason why? The union exists, don't it, in fact?

The WITNESS: I understand so; yes, sir.

The COURT: What would be the difference in treating with a committee from a lodge of union miners and to treat with the same men divested of unionism? Would there be any difference at all?

The WITNESS: We only want to deal with the men that were in our employ.

The COURT: That don't answer the question. Couldn't you treat as well with union men as you could with men who were not union men?

The WITNESS: I say we would not ask them. If they come to us as a committee of our men we would not ask them if they were union men.

The COURT: These striking men are not in your employ at this time. Is that the way you look at it?

A. Yes, sir.

The COURT: They were in your employ?

The WITNESS: Yes, sir.

130 The COURT: Suppose they come and want to treat with you. Would you not treat with them because they were union men?

The WITNESS: We would not treat with the union; no, sir.

The COURT: Just because it is a union?

The WITNESS: Not specially because it is a union; it is because we only want to treat with our own men.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): As I understand you, you won't treat with the union as a union?

The WITNESS: No, sir.

Mr. Jos. M. HILL (of counsel for K. & T. Coal Co.): You won't treat with even your own employees if they come to you representing the union?

WITNESS: No, sir.

—. But if they come to you representing your own employees

you treat with them, and don't care whether they are union men or not?

The WITNESS: That is it exactly.

The COURT: Suppose the union men would come to you and propose to do exactly right, wouldn't you treat with them? To treat on just and equitable terms. Wouldn't you treat with them then?

The WITNESS: We would not want to make any agreement with the union; it is a secret organization.

The COURT: In other words, you hold yourselves aloof from the others and stand apart like sovereign powers and say, "We won't recognize you as a union;" just sorter like the North used to do to the southern confederacy? (Applause.)

The WITNESS: I don't know about that. We are not employing the union. I don't know anything about it.

The COURT: All I want to know—of course, that has nothing to do with the discussion of this case, but I just wanted to satisfy myself upon that one proposition—why it was, if there was any valid reason you could give, why it was that your company would not treat with union men as well as non-union men.

The WITNESS: I have stated we would not ask. If they come as our own men, we would not ask them whether they were union men or not; it would be immaterial.

The COURT: Suppose that these men now are not in your employ, and they come to you and say, "We don't come as union men, but we come here to treat"—take three striking miners, and these three striking miners just say, "We divest ourselves of all unionism, and we come to you now to treat"—would you treat with them?

131 The WITNESS: I think so.

The COURT: Now, then, explain to me the difference—why it is you would not treat with these same three men if they come to you as union men.

The WITNESS: Simply because we do not know what the union is. It is a secret society, as I understand it, and we do not know who we are dealing with.

Mr. J. S. LITTLE (of counsel for State): You decline to recognize organized labor as an organization? That is the whole thing in a nutshell.

The WITNESS: It might be construed that way. We do not refuse to employ a man because he is a union man.

Mr. J. S. LITTLE (of counsel for State): Were you referring to organized labor as a union?

The WITNESS: Certainly.

Mr. J. S. LITTLE (of counsel for State): Then, if I understand the position of your company, it declines to negotiate with the organized labor—not organized labor, but the organization. You only negotiate with the individual men when they come to you as individuals?

The WITNESS: Yes, sir.

Mr. J. S. LITTLE (of counsel for State): But you are willing for them to represent the balance of the miners in the mine when they come?

The WITNESS: Yes, sir.

Mr. J. S. LITTLE (of counsel for State): Without knowing what kind of agreements they have entered into?

No response.

By Mr. Jos. M. HILL:

Q. Don't the miners take the same position? They won't send a committee to — representing the miners, but representing the union?

A. That is the position they took in this case.

Q. They won't come to you as Jones, Smith, and Brown, or a committee, representing the miners, but they come to you as Jones, Smith, and Brown, representing the union?

A. Yes, sir; that is the way they have done in this case.

Q. They won't come to you in the way that Judge Rowe (the court) suggests, as union men who are representing the miners?

A. No, sir.

132 Q. They come to you as official representatives of the union?

A. Yes, sir.

Q. And for that reason you won't have anything to do with them in that capacity?

A. Yes, sir.

Q. But if they will divest themselves of their official capacity as representing this union and want to speak for themselves and their fellow-workmen, you will treat with them at any time?

A. Yes, sir.

Q. Will this union deal with any one mining company? Don't it attempt to deal with all the various companies operating here? What is your information about that?

A. I am not sure about that.

Q. You don't know about these details?

A. No, sir.

The COURT: I want to understand this proposition clearly. We will take John Jones and Smith and Tom Brown. Now, all these men belong to the union organization, and they come to you and they say to you, "We don't come to you as union men; we have been with the striking miners, and we do not come to you as union men, but we come to make this demand of you, that if you will allow us ten cents additional—just take that, for example—on our wages, we will go to work," and you were to say, "Well, that is right; I will allow that." Now, then, suppose that these men came to you, these same men, as union men, and demanded ten cents additional——

A. (Interrupting.) And ask you to sign an agreement with the miners' union?

The COURT: Yes.

Answer. Well, we would not do it.

The COURT: Please explain to me why it would be right in one instance and wrong in the other.

The WITNESS: Simply because, as I said before, the miners' union

is a secret organization, and we do not know who we are dealing with.

The COURT: What would the secret organization have to do with the matter of right and justice between you and the miners?

The WITNESS: We would simply be making a contract with some one—we don't know what they are.

(Witness excused.)

133 STATE OF ARKANSAS, }
County of Sebastian. }

In the Circuit Court of Sebastian County for the Fort Smith District.

STATE OF ARKANSAS *ex Rel.* Jo. JOHNSON, Prosecuting Attorney, }
vs. }
KANSAS & TEXAS COAL COMPANY and ST. LOUIS & SAN FRANCISCO Railroad Company. }

Transcript of the Testimony of Dan. Hogan.

Before his honor Styles T. Rowe.

Appearances: For the State, Jo. Johnson, prosecuting attorney; John S. Little, Edgar E. Bryant, and Ben. T. Du Val. For the K. & T. Coal Co., Messrs. Hill & Brizzolara. For the St. L. & S. F. R. R. Co., B. R. Davidson.

April 27, 1899.

134 DAN. HOGAN, having been duly sworn upon behalf of the Kansas & Texas Coal Company, was examined in chief by Mr. Jos. M. Hill, and testified as follows, to wit:

Question. Were you present when Mr. Bennett Brown had a conversation with a man by the name of Zrossig, or some such name as that, who had been convicted in Squire Cliff's court down there, in regard to which there were some affidavits filed here in this case?

Answer. Yes, sir.

Q. Wish you would tell the court just what that conversation was.

A. Peter Zrossig had been apprehended there on the streets and searched for concealed weapons. On his person had been found a butcher knife, and he was taken to the calaboose and locked up. Squire Cliff was sent for and he came over, and he went to the court-room and brought the prisoner over, and he was tried and found guilty of carrying concealed weapons, and fined $50 and started to the jail. Commitment had been issued. Mr. Brown came in about that time and sent for me and informed me that he wanted to appeal the case. I went over to his office and took the squire over there. In fact, they already had started with him to the jail and Mr.

Brown's office was in that direction. We went over there and I prepared the appeal papers, and just about the time I was finishing the papers up, or some time after, maybe, Mr. Brown engaged in conversation with Zrossig, the defendant, and asked him if he did not know it was a violation of law to carry concealed weapons. He said he didn't; he thought he could carry a butcher knife. Mr. Brown told him if he felt himself in danger of life or limb to get him a shotgun or Winchester, or, if it was necessary, put a cannon on his back, and if anybody interfered with him in his lawful discharge of his duty or attempted his life in any way, not to hesitate, but to blow the top of their heads off; but, he says, "Remember that you must never be the aggressor; always let the other fellow be the aggressor."

Q. I see in an affidavit here the following statement (reads to witness statement of A. J. Burke). Is that correct as a statement of your position as given by Mr. Burke?

135 A. Well, it is hardly correct. I stated to Mr. Burke, when asked to make this statement—I said to him that I did not care to take sides in the matter—I hadn't taken sides up to this hour except in a legal way, and I did not desire to become anybody's witness, and much less by way of affidavit; that if they wanted my testimony they could summon me, and I would come here and testify before the chancellor. I had another reason that I did not express to him, and that was that in addition to the things they were going to place in the affidavits I knew there were some qualified statements that Mr. Brown had made that the judge ought to have knowledge of.

Q. Those are the qualified statements which you are giving here to the court?

A. Yes, sir.

Q. And they don't appear in this affidavit?

A. No, sir. The affidavit is true so far as it goes, but it does not qualify Mr. Brown's statement in the way it ought to be qualified.

Q. It does not tell the entire conversation?

A. No, sir.

Q. Nor the circumstances of it? Did you tell Mr. Brown of this trial and the way it was conducted?

A. Yes, sir.

136 *Opinion of Court.*

In the Circuit Court of the United States for the Fort Smith Division of the Western District of Arkansas.

THE STATE OF ARKANSAS, Plaintiff,
vs.
KANSAS AND TEXAS COAL COMPANY and ST. LOUIS & SAN FRANCISCO Railroad Company, Defendants.

On April 23, 1899, this cause was brought by the State (at the relation of Jo. Johnson, prosecuting attorney for the twelfth judicial

circuit) in the circuit court of Sebastian county for the Greenwood district, in the State of Arkansas. From the complaint it appears that both defendant companies are Missouri corporations; that the defendant coal company (hereinafter designated coal company for convenience), when the bill was filed, owned and was operating a coal mine at Huntington, in said Greenwood district of Sebastian county, and that the defendant railroad company (hereinafter designated railroad company for convenience) owned and operated a railroad in said county and twelvth judicial circuit. Omitting, for the purposes of this motion, irrelevant matter, the bill charges "that the defendant coal company is threatening and is about to import into said county (Sebastian) and town of Huntington, over a line of their codefendant's railroad, a large number of armed men of the low and lawless type of humanity, to wit, about two hundred, to the great danger of the public peace, morals, and good health of said county, and more particularly of said town."

On the 18th of July, 1899, the defendants filed a joint petition in said court, accompanied by a bond in the usual form, and prayed for an order of removal of this case to this court. The order of removal was denied by the State court, and thereupon the defendant companies procured and afterwards, on the 25th day of July, 1899, caused to be filed in this court a transcript of all the proceedings of the State court. On August 7, 1899, the State filed in this court a motion to dismiss the case for the following reasons: (1) Because the petition for removal and transcript of the record of the circuit court of Sebastian county for the Greenwood district thereof show that it is not removable to this court under the laws of the United States; (2) because the State of Arkansas being plaintiff and defendants alleged to be citizens of the State of Missouri, this court could acquire no jurisdiction on the ground of diverse citizenship; (3) because the record aforesaid shows it is not a civil action for the enforcement of a right arising under the Constitution and laws of the United States or treaties made under their authority, or arose under the Constitution and laws and treaties aforesaid; (4) because under the constitution and laws of the State of Arkansas the St. Louis & San Francisco Railroad Company, one of the defendants, is a domestic corporation and is subject to the jurisdiction of the courts of said State.

137 ROGERS, *J.:*

Counsel who filed the motion to dismiss has made no point with reference to the first paragraph of the motion, and it is not necessary to consider it unless it be intended thereby to raise the question that it does not appear that the amount in controversy exceeds the sum of two thousand dollars. That question is *res adjudicata* in this court. Hume *v.* City of Fort Smith, 93 Fed., 857. See also 67 U. S., 485.

It has been held that a State is not a citizen, and under the judiciary acts of the United States it is well settled that a suit between a State and a citizen or corporation of another State is not between citizens of different States, and that the circuit court of the United States has no jurisdiction of it unless it arises under the Constitution,

laws, or treaties of the United States. Amex *v.* Kansas, 111 U. S., 449; Stone *v.* S. C., 117 U. S., 430; Germania Ins. Co. *v.* Wis., 119 U. S., 473.

The second paragraph of the motion to dismiss, therefore, is well taken. The fourth paragraph of the motion has been settled adversely to the motion in the case of St. Louis & San Francisco Railway Co. *v.* James, 161 U. S., 545.

Nothing remaains to consider except the third paragraph of the motion. It is conceded and is settled law that under the act of August 13, 1888, a case (not depending upon the citizenship of the parties nor otherwise specially provided for) cannot be removed from a State court into the circuit court of the United States as one arising under the Constitution, laws, or treaties of the United States unless that appears by the plaintiff's statement of his own claim, and if it does not so appear the want cannot be supplied by any statement in the petition for removal or in the subsequent pleadings. Tenn. *v.* U. & P. Bank, 152 U. S., 452; Chappell *v.* Waterworth, 155 U. S., 102; Postal Telegraph Co. *v.* Ala., 155 U. S., 482; East Land Co. *v.* Brown, 155 U. S., 488; Tex. Pa. Rw. Co. *v.* Cody, 166 U. S., 607; Walker *v.* Collins, 156 U. S., 57.

138 The cases cited make it clear that in determining whether or not the present case is a suit of a civil nature arising under the Constitution or laws of the United States or treaties made or which shall be made under their authority must be determined by an examination of the complaint itself, and not by anything which is found either in the petition for removal or in any subsequent pleadings filed. Attention is therefore directed to an examination of adjudged cases determining when a suit is one "arising under the Constitution or laws of the United States," etc. In Tenn. *v.* U. and P. Bank, 152 U. S., 459–462, it was said:

"The earliest act of Congress which conferred on the circuit courts of the United States general jurisdiction of suits of a civil nature, at common law or in equity, arising under the Constitution or laws of the United States or treaties made or which shall be made under their authority" was the act of March the 3d, 1875, c. 137, 18 Stat., 470. Under section 1 of that act, providing that those courts should have original cognizance of such suits when the matter in dispute exceede- the sum or value of $500, their jurisdiction was exercised in cases in which the plaintiff's statement of his cause of action showed that he relied on some right under the Constitution or laws of the United States.

Feebleman *vs.* Packard, 109 U. S., 421; Kansas Pacific Railroad *v.* Atchison, &c., Railroad, 112 U. S., 414; New Orleans *v.* Houston, 119 U. S., 265; Bachrack *v.* Norton, 132 U. S., 337; Cooke *v.* Avery, 147 U. S., 375. And under section 2 of that act, which provided that any suit of a civil nature, at law or in equity, brought in any State court "arising under the Constitution or law- of the United States or treaties made or which shall be made under their authority" might be removed by either party into the circuit court of the United States, it was held sufficient to justify a removal by the defendant that the record at the time of the removal showed that either party

claimed a right under the Constitution or laws of the United States. Railroad Co. *v.* Mississippi, 102 U. S., 135; Ames *v.* Kansas, 111 U. S., 449, 462; Brown *v.* Houston, 114 U. S., 622; Providence Saving Society *v.* Ford, 114 U. S., 635–642; Pacific Railroad Removal cases, 115 U. S., 1; Tennessee *v.* Whitworth, 117 U. S., 129–139; Southern Pacific Railroad *v.* California, 118 U. S., 109; Bock *v.* Perkins, 139 U. S., 628.

"But, as has been decided under that act, the suit must be one in which some title, right, privilege, or immunity on which the recovery depends will be defeated by one construction of the Constitution or a law or treaty of the United States or sustained by a contrary construction." Carson *v.* Dunham, 121 U. S., 421–427. "A cause cannot be removed from a State court simply because in the progress of the litigation it may become necessary to give a construction to the Constitution or laws of the United States." Gold Washing Co. *v.* Keys, 96 U. S., 199, 203. "And the question whether a party claims a right under the Constitution or laws of the United States is to be ascertained by the legal construction of its own allegation, and not by the effect attributed to those allegations by the adverse party." Central Railroad *vs.* Mills, 113 U. S., 249–257. "Even under the acts of 1875 the jurisdiction of the circuit court of the United States could not be sustained over a suit originally brought in that court upon the ground that the suit was one arising under the Constitution, laws, or treaties of the United States, unless that appeared in the plaintiff's statement of his own claim." This was distinctly adjudged and the reasons clearly stated in Metcalf
139 *v.* Watertown, 128 U. S., 586, 589, in which Mr. Justice Harlan, after pointing out that the cases in which it had been held sufficient that the Federal question upon which the case depended was first presented by the answer or plea of the defendant were cases of removal, in which, therefore, the requisite of jurisdiction appeared on the record at the time when the jurisdiction of the circuit court of the United States attached, said: "Where, however, the original jurisdiction of a circuit court of the United States is invoked upon the sole ground that the determination of the suit depends upon some question of a Federal nature, it must appear, at the outset, from the declaration or the bill of the party suing that the suit is of that character—in other words, it must appear in that class of cases that the suit was one of which the circuit court, at the time its jurisdiction is invoked, could properly take cognizance.

"If it does not so appear, then the court, upon demurrer or motion or upon its own inspection of the pleading, must dismiss the suit, just as it would remand to the State court a suit which the record at the time of removal failed to show was within the jurisdiction of the circuit court. It cannot retain it in order to see whether the defendant may not raise some question of a Federal nature, upon which the right of recovery will finally depend, and if so attained, the want of jurisdiction at the commencement of the suit is not cured by an answer or plea which may suggest a question of that kind." That view has been affirmed and acted on at the present term in Colorado Co. *v.* Turck, 150 U. S., 138–143.

The same rule applies more comprehensively to the acts of 1887 and 1888. In section 1, as thereby amended, the words giving original cognizance to the circuit courts of the United States in this class of cases are the same as in the act of 1875 (except that the jurisdictional amount is fixed at $2,000), and it is therefore essential to their jurisdiction that the plaintiff's declaration or bill should show that he asserts the right under the Constitution or laws of the United States, but the corresponding clause in section 2 allows removals from a State court to be made only by defendant, and of suits "of which the circuit courts of the United States are given original jurisdiction by the preceding section," thus limiting the jurisdiction of the circuit court of the United States on removal by this defendant under this section to such suits as might have been brought in that court by the plaintiff under the first section. 24 Stat., 553; 25 Stat., 434. The change is in accordance with the general policy of these acts, manifest upon their face, and often recognized by this court, to contract the jurisdiction of the circuit courts of the United States. Smith *v.* Lyon, 133 U. S., 315–320; *In re* Pennsylvania Company, 137 U. S., 451–454; Fiske *v.* Henarie, 142 U. S., 459–467; Shaw *v.* Quincy Mining Company, 145 U. S., 444–449; Martin *vs.* Baltimore & Ohio Railroad, 151 U. S., 673, 687.

In Ames *v.* Kansas, 11 U. S., 462, Chief Justice Waite, delivering the opinion of the court and sustaining its jurisdiction, said:

"The rights set up by the company and by the directors as well will be defeated by one construction of these acts and sustained by the opposite construction. When this is so, it has never been doubted that a case is presented which arises under the laws of the United States." *Sighting* Cohens *v.* Va., 6 Wheat., 264, 379; Gold Washing and Water Company *v.* Keyes, 96 U. S., 201; Railroad Company *v.* Miss., 102 U. S., 140.

In Starin *v.* N. Y., 115 U. S., 257, the same learned chief justice said: "The character of a case is determined by the questions involved. Osborne *v.* Bank of the United States, 9 Wheat., 737–824. If from the questions it appears that some title, right, privilege, or immunity on which recovery depends will be defeated by one construction of the Constitution or a law of the United States, or sustained by the opposite construction, the case will be one arising under the Constitution or laws of the United States within the meaning of that term as used in the acts of 1875; otherwise not. Such is the effect of the decisions on this subject." *Sighting* Cohens *v.* Va., 6 Wheat., 264; Osborne *v.* Bank of the United States, 9 Wheat., 737; The Mayor *v.* Cooper, 6 Wall., 247; Gold Washing & Water Co. *v.* Keyes, 96 U. S., 199; Tenn. *v.* Davis, 100 U. S., 257; R. R. Company *v.* Miss., 102 U. S., 135; Ames *v.* Kansas, 111 U. S., 449; Kansas Pacific *v.* Atchison, 112 U. S., 414; Providence Saving Company *v.* Ford, 114 U. S., 636; Pacific Removal cases, 115 U. S., 1.

140 In Southern Pacific Railroad Co. *v.* Calif., 118 U. S., 112, the same learned Chief Justice approved R. R. Co. *vs.* Miss., *supra;* Ames *v.* Kansas, *supra;* Starin *v.* N. Y., *supra*, quoting the same language which he had previously used in Starin *v.* N. Y., *supra.*

In Germania Ins. Co. *v.* Wis., 119 U. S., 475, the same learned Chief Justice again reiterated the same doctrine, using the same language which had been used in Ames *v.* Kansas, *supra.*

In Minn. *v.* Duluth & I. R. R. Co. *et al.*, 87 Fed., 498, Judge Lochren, delivering the opinion of the court, calls attention to what has been held in Tenn. *v.* Union & Planters' Bank, *supra;* Starin *v.* N. Y., *supra;* Carson *v.* Dunham, *supra,* and further states that on the precise point under consideration the decisions under the act of March 3, 1887, are equally applicable to the act of August 13, 1888. He then says: "To give the United — circuit court jurisdiction it is not necessary that it should appear that plaintiff's right to recover is based upon and supported by some provision of the Constitution or statutes of the United States. A Federal question is equally presented if it appears from plaintiff's statement of facts that a construction which may be fairly claimed and contended for of a provision of such Constitution or statutes would defeat plaintiff's right to recover."

In Lowery *v.* Chicago, B. & Q. R. R. Co., 46 Fed., p. 83, Judge Caldwell said: "It is enough that there is a Federal question in the case, whether it is relied on by the plaintiff or the defendant. A case arises under a law of the United States wherever that law is the basis of the right or privilege or claim or protection or defense of the party, in whole or in part, by whom it is set up."

To the cases cited might be added many others to the same effect. These, however, suffice to show and establish the rule. It remains to apply the principles declared to the case at bar. In the examination of the complaint for the purpose of this motion its crudities or the insufficiency of facts to warrant the relief sought, if such be the case, are not open to attack or criticism, since defects in these regards may be corrected by amendment in either of the courts having jurisdiction if the facts warrant. This court is limited now to the question as to whether, at the time the jurisdiction of this court was invoked, it appeared from the plaintiff's complaint that the controversy between the parties involved a Federal question. The substantial and material allegations of fact in the complaint is (and it is the only allegation of fact in it which is considered substantial and material) that the defendant coal company "is threatening and is about to import into said county and town of Huntington, over the line of their codefendant's railroad, a large number of armed men of the low and lawless type of humanity, to wit, about two hundred." The allegations as to what results would follow such importations are merely conjectural or speculative, or at most a matter of opinion upon the part of the relator, depending, of course, upon the type of men imported and their physical, financial, and moral conditions. Of these conditions it does not appear that the relator knows anything. No facts appear from which it may be seen what the character of the nuisance is which their importation will produce or in what way the peace, morals, or health of the State and the town will be affected or in what way riot and bloodshed would be brought about or the nature and character of the contagious or infectious diseases they would disseminate. It is not even alleged that they

now have or have been subjected to any diseases. All these matters are purely speculative.

The contention on the part of the plaintiff is that, under the police power of the State, it has the right to prevent the defendant coal company from importing into the State and to prevent the defendant railroad company from transporting over its road the class of persons described in the complaint as "armed men of the low and lawless type of humanity." The contention of the defendants is that the exercise of such power is in violation of the interstate-commerce law and of the fourteenth amendment to the Constitution of the United States. On this motion to dismiss or to remand, my sole duty is to ascertain if any such defense can fairly be interposed. The merits of the question are not now involved and should not be determined, except so far as may be necessary in order to determine
141 whether the State's contention involves an invasion of the powers confided to the United States under its Constitution or statutes, or, to state it differently and within the language of the adjudged cases, whether it appears from plaintiff's statement of facts that a construction which may be fairly claimed and contended for of a provision of the Constitution or statutes of the United States would defeat plaintiff's right to relief. It is not specifically alleged in the complaint that the defendant railroad company is engaged in interstate commerce. It is alleged that it is a Missouri corporation, and that its codefendant had threatened and was about to import over the line of said railroad a certain designated type of men. It was not argued at the hearing that said company was not engaged in interstate commerce in the transportation of the men referred to, and it is fairly to be deduced from the complaint that such was true. The word "import" itself implies a bringing of men either from a foreign country or another State into this State. The same is true of the defendant coal company. The employment and shipment of men from other States into Arkansas over its codefendant's railroad is interstate commerce.

It was argued at the bar that coal mining was not interstate commerce. That is true. This court so held in U. S. *v.* Boyer, 85 Fed., 425, where a full discussion of what it takes to constitute interstate commerce and a collation of adjudged cases may be found, and from which it was deduced that—

"When the (interstate) commerce begins is determined not by the character of the commodity nor by the intention of the owner to transfer it to another State for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation or the actual commencement of its transfer to another State. At that time the power and regulating authority of the State ceases and that of Congress attaches and continues until it has reached another State and become mingled with the general mass of the property in the latter State; that neither the production or manufacture of articles or commodities which constitute subjects of commerce and which are intended for trade and traffic with citizens of other States, nor the preparation for their transportation from the State where produced or manufactured prior to the commencement

of the actual transfer or transmission thereof to another State, constitutes that interstate commerce which comes within the regulating power of Congress." *In re* Green, 52 Fed., 113.

But interstate commerce is not confined to goods, wares, and merchandise. It embraces passengers. It was not argued otherwise at the hearing.

In Railroad Co. *v.* Husen, 95 U. S., 469, which is a case growing out of the statute of the State of Missouri providing that "no Texas, Mexican, or Indian cattle shall be driven or otherwise conveyed into or remain in any county of this State between the first day of March & the first day of November in each year by any person or persons whatsoever," the court, in holding the statute unconstitutional because it violated the interstate commerce clause of the Federal Constitution, said:

"It seems hardly necessary to argue at length that unless the statute can be justified as legitimate exercise of the police power of the State it is a usurpation of the power vested exclusively in Congress. It is a plain regulation of interstate commerce, a regulation extending to prohibition. Whatever may be the power of a State over commerce that is completely internal, it can no more prohibit or regulate that which is interstate than it can that which is with foreign nations. Power over one is given by the Constitution of the United States to Congress in the same words in which it is given over the other, and in both cases it is necessarily exclusive. That the transportation of property from one State to another is a branch of interstate commerce is undeniable, and no attempt has been made in this case to deny it.

"The Missouri statute is a plain interference of such transportation and attempted exercise over it of the highest possible power—that of destruction. It meets at the borders of the State a large and common subject of commerce and prohibits its crossing the State line during two-thirds of each year, with a proviso, however, that such cattle may come across the line loaded upon a railroad car or steamboat and pass through the State without being unloaded; but even the right of steamboat owners and railroad companies to transport such property through the State is loaded by the law with onerous liabilities because of their agency in the transportation. The object and effects of the statute are therefore to obstruct interstate commerce, and to discriminate between the property of the citizens of one State and that of citizens of other States. This court has heretofore said that interstate transportation of passengers is beyond the reach of a State legislature; and if, as we have held, State taxation of persons passing from one State to another or a State tax upon interstate transportation of passengers is prohibited by the Constitution because a burden upon it *a fortiori*, if possible, is a State tax upon the carriage of merchandise from State to State. Transportation is essential to commerce, or rather it is commerce itself, and every obstacle to it or burden laid upon it by legislative authority is regulation. Case of the State freight tax, 15 Wall., 232; Ward *v.* Maryland, 12 *id.*, 418; Welton *v.* The State of Missouri, 91 U. S., 275; Henderson *et al. v.* Mayor of the City of

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New York *et al.*, 92 *id.*, 259; Chylung *v.* Freeman *et al.*, *id.*, 275. The two latter of these cases refer to obstructions against the admission of persons into a State, but the principles asserted are equally applicable to all subjects of commerce."

It will be observed that the Missouri statute under discussion was a prohibitory statute. In the case at bar the bill is based on no statute. No statute has been referred to as relating to such persons as are designated in the bill. The court knows of none. Indeed, there is none. The State through its legislature has not attempted to exercise its police power in this regard. It is an attempt to have the court declare what the law of the State is or what measures are needful to the State in this behalf, without any expression whatever of the legislative department of the State, and to declare that the designated type of persons mentioned in the bill shall not be brought into the State at all, at any time, by the defendant. It is absolutely and unconditionally prohibitory of the designated class.

It may well be inquired whether a State court can lawfully declare, independent of any statute and independent of the common law as adopted by statute, what the policy of the State is with reference to the type or character of persons coming thereto.

I have found no case in which it has been done. I find no author who recognizes any such doctrine. All the cases examined have arisen out of statutes alleged to be unauthorized by the police power or powers reserved to States. I need not allude to the anomalous condition which would result from prohibiting the defendants in this case from bringing persons into the State of the class designated and leaving all other companies and all other persons the privilege of doing so at their pleasure, for this only tends to show that the police power of the State in this behalf should be exercised by the legislature and applied to all persons alike. On this point Prentice, in his work on Police Powers, p. 31, says: "It belongs to the legislative branch of the Government to determine primarily what measures are appropriate and useful for the protection of the public morals, the public health, or the public safety.

In Mugler *v.* Kansas, 123 U. S., 661, one of the questions was as to what authority should determine whether the manufacture of particular articles of drink would injuriously affect the public. This question grew out of a law prohibiting the manufacture or sale of liquor in that State. The court said: "Under our system that power is lodged with the legislative branch of the Government. It belongs to that department to exert what are known as the police power of the State and to determine primarily what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety."

As tending to establish the correctness of this doctrine, in Railroad Company *v.* Husen, 95 U. S., 470, it is said:

"We admit that the deposit in Congress of the power to regulate foreign commerce and commerce among the States was not a surrender of that which may properly be denominated police power. What that power is it is difficult to define with sharp precision. It is generally said to extend to making regulations promotive of do-

mestic order, morals, health, and safety." As was said in Thorp *v.* The Rutland & Burlington Railroad Company, 27 Vt., 149: "It extends to the protection of the lives, limbs, health, comfort, and quiet of all persons and the protection of all property within the State."

143 According to the maxim, *Sic utere tuo ut alienum non lædas*, which, being of universal application, it must of course be within the range of legislative action to define the mode and manner in which every one may so use his own as not to injure others. It is further said that by the general police power of a State "persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the State, of the perfect right of the legislature to do which no question ever was or, upon acknowledged general principles, ever can be made, so far as natural persons are concerned." It may also be admitted that the police powers of the State justifies the adoption of precautionary measures against social evils.

Under it a State may legislate to prevent the spread of crime or pauperism or disturbance of the peace. It may exclude from its limits convicts, paupers, idiots and lunatics, and persons likely to become a public charge, as well as persons afflicted by contagious or infectious diseases, a right founded, as intimated in the Passenger cases, 7 Howe, 283, by Mr. Justice Greer, in the sacred law of self-defense. *Vide* 3 Sawyer, 283. The same principle, it may also be conceded, would justify the exclusion of property dangerous to the property of the citizens of the State—for example, animals having contagious or infectious diseases. All the exertions of power are in immediate protection of persons and property against noxious acts of other persons or such a use of property as is injurious to the property of others. They are self-defensive.

"But whatever may be the nature and reach of the police power of a State, it cannot be exercised over a subject confided exclusively to Congress by the Federal Constitution." See, also, People and Gilleam, 17 N. E. Rep'r (N. Y.), 343.

It will be seen, therefore, that, ordinarily at least, the exercise of what is known as the police power of the State is confided to its legislature.

But to recur to the question, Is it within the power of the State to enact legislation prohibiting the class of persons designated in the bill coming into the State? If the State cannot prohibit them by legislation, its courts cannot do so in the absence of legislation.

It may do so, all will admit, so far, at least, as the United States is concerned, if in doing so no power confided to the General Government is invaded thereby. It goes without saying that "no State can exercise power over a subject confided exclusively to Congress by the Federal Constitution. It cannot invade the domain of the National Government." Railroad Co. *v.* Husen, 95 U. S., 471. Let us, therefore, examine more analytically the allegations in the bill describing the class of persons it is sought to prohibit being imported into the State. They are "armed men of the low and lawless type." How are they armed? The bill does not say. The allega-

tion is broad enough to cover all kinds of arms. Art. 2, Amendments to the Constitution of the United States, declares that "a well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." Sec. 5, art. 2, of the present constitution of this State declares that "the citizens of this State shall have the right to keep and bear arms for their common defense."

In Cooley on Torts, page 301, the author says:

"No military or civil law can take from the State the right to bear arms for the common defense. This is an inherited and seditionary right, guaranteed also by State and Federal constitutions; but it extends no further than to keep and bear those arms which are suited and proper for the general defense of the community against invasion and oppression, and does not include the carrying of such weapons as are specially suited for deadly individual encounters."

This same doctrine has been recognized by the supreme court of this State in Fife *v.* State, 31 Ark., 455.

The above amendment to the Constitution of the United States, however, is a restraint upon Federal, and not upon State, legislation. Fife *v.* State, 31 Ark., 458. It will be seen by the examination of this case that it is a constitutional right of the citizens of this State, recognized by the court, that the citizens thereof shall have the right to keep and bear arms, and it is also seen from the above amendment to the Constitution of the United States that the Federal Government is denied the power to deprive the people of the right to keep and bear arms. By the fourteenth amendment to the Constitution of the United States, "All persons born or naturalized
144 in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." By this amendment to the Constitution of the United States a citizen of another State is guaranteed all the rights and privileges of the citizens of this State, and every State is forbidden to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States or deny to any person within its jurisdiction the equal protection of law. One of the rights, as we have seen, guaranteed by the constitution of this State to all of its citizens is that that they shall have the right to keep and bear arms for their common defense. If this right belongs to the citizens of this State under the fourteenth amendment, can the State pass any law which shall deprive citizens of other States of the same right under the same circumstances? It has not done so. There is no such statute. Is it not, therefore, one of the probable questions in controversy in this suit as to whether or not the State has the power to prohibit men who are armed coming into the State? It must be remembered that there is no allegation in the bill that these men are armed or banded together, coming or being imported into the State for the purpose of invading it or vio-

lating any laws thereof, or that their purpose is in any respect a violation of any of the laws of the State; but these armed men are described in the bill to be of the "low and lawless type." Let us examine what is meant by these words "low and lawless." The *Century Dictionary defines* "*low*" as "not high in character or condition; not haughty or proud; meek; lowly; lacking in dignity, refinement, or principle; vulgar, grovelling, abject, mean, base; in a mean condition, as 'a low-born fellow.'" The word "lawless" is defined by the Century Dictionary as "not subject or submissive to law; uncontrolled by law, whether natural, human, or divine." The question therefore arises whether it is within the power of the State to prohibit the class of persons thus described while armed coming or being brought into the State. No statute has been enacted to that effect. In Buell *v.* State, 45 Ark., 338, the supreme court said:

"It may be doubted whether it is competent for the legislature to authorize a town council to proscribe any particular class of people against whom no overt act is charged, although in Shafer *v.* Munna, 17 Md., 331, such a power, expressly conferred in the character of Hagerstown, was sustained. Possibly the right to live in a given community is a common right of which a person cannot be deprived, however degraded and subversive of good morals his occupation may be." Citing Milliken *v.* City Council, 54 Tex., 388; S. C., 38 Am. Rep., 639.

In re Ahfong, 1st Tea Cases, 213, is a case where a Chinese woman sued out a writ of *habeas corpus* in the circuit court of the United States for the district of California. She had been brought to San Francisco as a passenger, and, under a statute of California, had been declared by a commissioner of that State to be "a lewd and debauched woman," and was prohibited from landing in the State of California, and was remanded to the custody of the steamship, to be transported beyond the State. She sued out a writ of *habeas corpus* before the State district court of California and the writ was dismissed. It was appealed to the supreme court of California, and the judgment of the district court affirmed. She then sued out a writ of *habeas corpus* to the circuit court of the United States, as above stated. Mr. Justice Field delivered the opinion of the court, and, in that State, said:

"It is undoubtedly true that the police power of the State extends to all matters relating to the internal government of the State and the administration of its laws, which have not been surrendered to the General Government, and embraces regulations affecting the health, good order, morals, peace, and safety of society. Under this power all sorts of restrictions and burdens may be imposed, having for their object the advancement of the welfare of the people of the State, and when these are not in conflict with established principles or any constitutional prohibition, their validity cannot be questioned.

145 "It is equally true that the police power of the State may be exercised by precautionary measures against the increase of crime or pauperism or the spread of infectious diseases from per-

sons coming from other countries; that the State may entirely exclude convicts, lepers, and persons affected with incurable diseases; may refuse admission to paupers, idiots, lunatics, and others who from physical causes are likely to become a charge upon the public until security is afforded that they will not become such a charge, and may isolate the temporarily diseased until the danger of contagion is gone. The legality of precautionary measures of this kind have never been doubted. The right of the State in this respect has its foundation, as observed by Mr. Justice Grier in the Passenger cases (7 Howe, 48 U. S., 462), in the sacred law of self-defense, which no power granted to Congress can restrain or annul.

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"Where the evil apprehended by the State from the ingress of foreigners is that such foreigners will disregard the laws of the State, and thus be injurious to its peace, the remedy lies in the more vigorous enforcement of the laws, not in the exclusion of the parties. Gambling is considered by most States to be injurious to the morals of their people, and is made a public offense. It would hardly be considered as a legitimate exercise of the police power of the State to prevent a foreigner who had been a gambler in his own country from landing in ours.

"If after landing he pursues his former occupation, fine him, and, if he persist*ed* in it, imprison him, and the evil will be remedied. In some States the manufacture and sale of spirituous and intoxicating liquors are forbidden and punished as a misdemeanor. If the forei-ner coming to our shores is a manufacturer and dealer in such liquors, it would be deemed an illegitimate exercise of the police power to exclude him, on account of his calling, from the State. The remedy against any apprehended manufacture and sale would lie in such case in the enforcement of the penal laws of the State. So, if lewd women, lewd men, even if the parties be of the baser sort, who, when Paul preached at Thessalonica, set all the city in an uproar (Acts XVII, verse 5), land on our shores, the remedy against any subsequent lewd conduct on their part must be found in good laws or municipal regulations and a vigorous police. It is evident that if the possible violations of the laws of the State by emigrants or the supposed immorality of his past life or profession, where that immorality has not already resulted in a conviction for a felony, is to determine his right to land and to reside in the State or to pass through into other and interior States, a door will be opened to all sorts of oppressions. The doctrine now asserted by counsel for the commissioner of immigration, if maintained, would certainly be invoked, and at no distant day, when other parties besides low and despised Chinese women are the subjects of its application, and would then be seen to be a grievous departure from principle.

"I am aware of the very general feeling prevailing in this State against the Chinese and in opposition to the extension of any encouragement to their immigration hither. It is felt that the dissimilarity in physical characteristics, in language, manners, religion, and habits, will always prevent any possible assimilation of them

with our people. Admitting that there is ground for this feeling, it does not justify any legislation for their exclusion which might not be adopted against the inhabitants of the most favored nation of the Caucasian race and of Christian faith. If their further immigration is to be stopped, recourse must be had to the Federal Government, where the whole power over this subject lies. The State cannot exclude them arbitrarily, nor accomplish the same end by attributing to them a possible violation of its municipal laws. It is certainly desirable that all lewdness, especially when it takes the form of prostitution, should be suppressed, and that the most stringent measures to accomplish that end should be adopted.

"But I have little respect for that discriminating virtue which is shocked when a frail child of China is landed on our shore, and yet allows the bedizened and painted harlot of other countries to parade our streets and open her hells in broad day without molestation and without censure.

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146 "And the power of exclusion by the State, as we have already said, extends only to convicts, lepers, and persons incurably diseased, and to paupers and persons who, from physical causes, are likely to become a public charge. The detention of the petitioner is therefore unlawful under the tr-aty.

"But there is another view of this case equally conclusive for the discharge of the petitioner, which is founded upon the legislation of Congress since the adoption of the fourteenth amendment. That amendment in its first section designates who are citizens of the United States, and then declares that no State shall make or enforce any law which abridges their privileges or immunities. It also enacts that no State shall deprive 'any person' (dropping the distinctive designation of citizen) of life, liberty, or property without due process of law, nor deny to any person the equal protection of the law. The great fundamental rights of all citizens are thus secured against any State deprivation, and all persons, whether native or foreign, high or low, are, whilst within the jurisdiction of the United States, entitled to the equal protection of the law. Discriminating and partial legislation favoring particular persons or against particular persons of the same class is now prohibited.

"Equality of privilege is the constitutional right of all citizens, and equality of protection is the constitutional right of all persons.

"And equality of protection implies not only equal accessibility to the courts for the prevention or redress of wrong and the enforcement of rights, but equal exemption with others of the same class from all charges and burdens of every kind. Within these limits the power of the State exists, as it did previously to the adoption of the amendment, over all matters of internal police."

Another case—that of Chylung *v.* Freeman *et al.*, 92 U. S., 275—of the same nature and class as the Ahfong case and originating under the same California statute, came before the Supreme Court of the United States, and Mr. Justice Miller, in holding that class of legislation void, says:

"The passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress and not to the State. It has the power to regulate commerce with foreign nations. The responsibility for the character of those regulations and for the manner of their execution belongs solely to the National Government. If it be otherwise, a single State can at her pleasure embroil us in disastrous quarrels with other nations.

"We are not called upon by this statute to decide for or against the right of the State, in the absence of legislation by Congress, to protect herself by necessary and proper laws against paupers and convicted criminals from abroad, nor to lay down the definite limit of such right if it exists. Such a right can only arise from a vital necessity for its exercise, and cannot be carried beyond the scope of that necessity.

"When a State statute, limited to provisions necessary to that object alone, shall in a proper controversy come before us, it will be time enough to decide that question.

"This legislation is held void under the interstate-commerce clause of the Constitution, which provides that Congress shall have power 'to regulate commerce with foreign nations and among the several States and with the Indian tribes.'"

In the case of Hannibal & St. Joe Railroad Company *v.* Husen, *supra*, the court, after referring to the Chylung case and the New York passenger cases, said:

"These cases, it is true, speak only of the laws affecting the entrance of persons into a State, but the constitutional doctrine they maintain *are* equally applicable to interstate transportation of property. They deny the validity to any State legislation professing to be and exercise of police power for protection against evils from abroad which is beyond a necessity for its exercise whenever it interferes with the rights and powers of the Federal Government."

147 Bowman *v.* Chicago, etc., R. R. Co., 125 U. S., 465, is a case where Bowman sued the railroad Co. for refusing to convey a large lot of beer into Iowa in violation of a statute of that State. The Supreme Court of the United States reviewed all the decisions touching the police power of a State and the power of Congress to regulate interstate commerce, and in referring to the freight-tax cases, 15 Wall., 279 (quoting from. Mr. Justice Strong, speaking for the court), said:

"'Cases that have sustained State laws, alleged to be regulations of commerce among the States, have been such as related to bridges or dams across streams wholly within a State, police or health laws, or subjects of a kindred nature not strictly of commercial regulations. The subjects were such as in Gilman *v.* Philadelphia, 3 Wall., 713, it was said, "can be best regulated by rules and provisions suggested by the varying circumstances of different localities, and limited in their operations to such localities respectively." However this may be, the rule has been asserted with great clearness that whenever the subjects over which a power to regulate commerce is asserted are in their nature national or admit of one uniform system

or plan of regulation, they may justly be said to be of such a nature as to require exclusive legislation by Congress.

Cooley *v.* Port Wardens, 12 How., 299; Crandall *v.* State of Nevada, 6 Wall., 42.

"Surely transportation of passengers or merchandise through a State or from one State to another is of this nature. It is of national importance that over that subject there should be but one regulating power, for if one State can directly tax persons or property passing through it, or tax them indirectly by levying a tax upon their transportation, every other may, and thus commercial intercourse between the States remote from each other may be destroyed. The produce of Western States may thus be effectually excluded from eastern markets, for though it might bear the imposition of a single tax it would be crushed under a load of many. It was to guard against the possibility of such commercial embarrassment, no doubt, that the power of regulating commerce among the States was conferred upon the Federal Government.

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"The power conferred upon Congress to regulate commerce among the States is indeed contained in the same clause of the Constitution which confers upon it power to regulate commerce with foreign nations. The grant is conceived in the same terms, and the two powers are undoubtedly of the same class and character and equally extensive. The actual exercise of its power over either subject is equally and necessarily exclusive of that of the States and paramount over all the powers of the State, so that State legislation, however legitimate in its origin or object, when it conflicts with the positive legislation of Congress, or its intention reasonably implied from its silence, in respect to the subject of commerce of both kinds, must fail; and yet in respect to commerce among the States it may be, for the reason already assigned, that the same inference is not always to be drawn from the absence of congressional legislation, as might be the case of commerce with foreign nations. The question, therefore, may still be considered in each case as it arises, whether the fact that Congress has failed in this particular instance to provide by law a regulation of commerce among the States is conclusive of its intention that the subject shall be free from all positive regulations, or that until it positively interferes such commerce may be left to be freely dealt with by the respective States."

In the same opinion, discussing the State freight tax, 15 Wall., 232, they say:

"If the State has no power to tax freight and passengers passing through it or to or from it from or into another State, much less would it have the power directly to regulate such transportation or to forbid it altogether.

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"It may be material also to state in this connection that Congress has legislated on the general subject of interstate commerce by

means of railroads prior to the date of the transaction on
148 which the present suit is founded. Section 5258 of the Revised Statutes provides that "every railroad company in the United States whose road is operated by steam, its successors and assigns, is hereby authorized to carry upon and over its roads, boats, bridges, and ferries all passengers, troops, Government supplies, mails, freight, and property on their way from any State to another State, and to receive compensation therefor, and to connect with roads of other States, so as to form continuous lines for the transportation of the same to the place of destination." In the case of Railroad Co. *v.* Richmind, 19 Wall., 584, this section, then constituting a part of the act of Congress of June 15th, 1866, was considered. Referring to this act and the act of July 25th, 1866, authorizing the construction of bridges over the Mississippi river, the court says: These acts were passed under the power vested in Congress to regulate commerce among the several States, and were designed to remove trammels upon transportation between different States which had previously existed, and to prevent a creation of such trammels in future, and to facilitate railway transportation by authorizing the construction of bridges over navigable waters of the Miss-ippi. But they were intended to reach trammels interposed by State enactment or by existing laws of Congress. The power to regulate commerce among the several States was vested in Congress in order to secure equality and freedom in commercial intercourse against discriminating State legislation, p. 589.

"Congress had also legislated on the subject of the transportation of passengers and merchandise in chapter 6, title 48, of the Revised Statutes, pars. 4252–4289, inclusive, having reference, however, mainly to the transportation in vessels by water. But pars. 4278 & 4279 relate also to the transportation of nitro-glycerine and other similar explosive substances by land or water, and either as a matter of commerce with foreign countries or among the several States. Sec. 4,280 provides that the two preceding sections shall not be so construed as to prevent any State, Territory, district, city, or town within the United States from regulating or from prohibiting the traffic in or transportation of those substances between persons or places lying or being within their respective territorial limits, or from prohibiting the introduction thereof into such limit for sale, use, or consumption therein.

"So far as these regulations made by Congress extend, they are certainly indications of its intention that the transportation of commodities between the States shall be free, except where it is positively restricted by Congress itself or by the States in particular cases by the express permission of Congress.

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"Also (p. 702), commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as a purchase, sale, and exchange of commodities. For the regulation of commerce *is* thus defined there

can be only one system of rules, applicable alike to the whole country; and the authorities which can act for the whole country can alone adopt such a system. Action upon it by separate States is not therefore permissible."

Further on in the same case the court says:

"In the present case the defendant is sued as a common carrier in the State of Illinois, and the breach of duty alleged against it is a violation of the law of that State in refusing to receive and transport goods which as a common carrier by that law it was bound to accept and carry. It interposes as a defense a law of the State of Iowa which forbids the delivery of such goods within that State. Has the law of Iowa any extraterritorial force which does not belong to the law of the State of Illinois?

If the law of Iowa forbids the delivery and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter?

149 In view of this necessary operation of the law of Iowa, if it be valid, the language of this court in the case of Hall *v.* De Cuir, 95 U. S., 485, 488, is exactly in point. It was there said: "But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce or to interfere directly with its freedom does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position."

And on p. 490 of the same case is the following:

"The exclusive State power is made to rest not on the fact of the state or condition of the article, nor that it is the property usually passing by sale from hand to hand, but on the declaration found in the State laws and asserted as a State policy that it shall be excluded from commerce, and by this means the sovereign jurisdiction in the State is attempted to be created in a case where it did not previously exist. If this be the true construction of the constitutional provision, then the paramount power of Congress to regulate commerce is subject to a very material limitation, for it takes from Congress and leaves with the State the power to determine the commodities or articles of property which are the subject of lawful commerce. Congress may regulate, but the States determine what shall or shall not be regulated. Upon this theory the power to regulate commerce, instead of being paramount over the subject, would become subordinate to the State police power, for it is obvious that the power to determine the articles which may be the subject of commerce, and thus to circumscribe the scope and operation, is in effect the controlling one. The police power would not only be a formidable rival, but in a struggle must necessarily triumph over the commercial power, as the power to regulate is dependent upon the power to fix and determine upon the subjects to be regulated. The same process of legislation and reasoning adopted by the State and its courts could bring within the police power any article of consumption that a State may wish to exclude, whether it belonged to that which was drunk or to food and clothing, and with nearly equal claims to propriety, as malt liquors and the produce of fruits other than grapes

stand on no higher ground than the light wines of this and other countries, excluded in effect by the law as it now stands, and it would be only another step to regulate real or supposed extravagance in goods and clothing."

And on p. 495 the court says:

"In Brown *v.* Houston, 114 U. S., 622, 630, it was declared that the power of Congress over commerce among the States is certainly so far excluded that no State has power to make any law or regulation which will affect the free and unrestrained intercourse and trade between the States as Congress has left it, or which will impose any discriminating burden or tax upon the citizens or products of other States coming or brought within its jurisdiction. All laws and regulations are restrictive of natural freedom to some extent, and where no regulation is imposed by the government which has exclusive power to regulate it, it is an indication of its will that the matter shall be left free. So long as Congress does not pass any law to regulate commerce among the several States it thereby indicates its will that that commerce shall be free and untrammeled, and any regulation of the subject by the States is repugnant to such freedom. This has been frequently laid down as law in the judgments of this court."

It will be observed that no overt act is charged against any of the class of persons threatened and about to be imported by the defendant coal company over the defendant railroad company's lines. They are not alleged to be convicts or ex-convicts, nor are they alleged to be paupers, idiots, insane, or diseased persons. They are said to be "armed" and to belong to the "low and lawless type of humanity," not that they are low and lawless themselves, but are of that type. No statute of this State condemns the coming of such men hither. No expression of the legislative will relating to that class of men coming into the State has found a place in our laws.

They are silent on that subject. It will be time enough to
150 decide whether the State has a power to prohibit them coming when a proper case based on such a statute is brought to the attention of the court. It is enough now to say that under the fourteenth amendment and under the commerce clause of the Constitution they now have that right. If they have the right to come, then the coal company has a right to import them with their consent, and the railroad company has the right to transport them with their consent. It is not pretended that they are being brought here by force. In the opinion of the court, it is not within the power of any court, State or Federal, to prescribe what rules and regulations are needful to the welfare, peace, health, safety, and morals of the State, or to determine, without legislation, what class or classes of persons may lawfully come thereto.

That power belongs to the legislature of the State and must be exercised within constitutional bounds.

It remains to be added that it has been repeatedly held that a corporation is a person within the meaning of the fourteenth amendment to the Constitution. Smith *v.* Ames, 169 U. S., 466; Santa

Clara Co. *v.* So. Pa., 118 U. S., 394; Charlotte, *ect.*, R. R. *v.* Gibbs, 142 U. S., 386; Gulf, etc., R. R. *v.* Ellis, 165 U. S., 150.

It is vain to pursue this investigation farther. I cannot avoid the conclusion, in view of the authorities from which I have quoted, that on the face of the plaintiff's complaint it appears that a construction of the interstate-commerce clause & of the fourteenth amendment to the Constitution of the United States are both involved; necessarily so (and would also be involved even if this bill were based on a statute of this State covering the class of persons designated in the bill), and that a correct determination of the case makes it necessary to construe those provisions of the Constitution of the United States, and that the construction placed upon them must necessarily settle the controversy.

This conclusion determines the fate of the motion. It is overruled.

From the conclusions arrived at by the court it is obvious that the injunction in this case must be dissolved; no amount of proof that might be offered could possibly change the result already reached.

It was urged upon the argument that this court had no supervisory control over the action of the State court. That is true; but when this case is removed from the State court into this court it stands here for hearing and determination precisely as if it had originally been brought here, and it will not be contended that if this court had committed an error in granting an injunction in a given case that when it was so made to appear it would not reverse its action and dissolve it.

The same would be true if the bill were in the State courts. The motion, therefore, to dissolve the injunction will be sustained.

The other motion, restraining the plaintiff from prosecution of this suit in the State court, will not be entertained. If the State sees fit to continue the prosecution of this case in the State court it will be permitted to do so, so long as in its prosecution it does not interfere with the relief granted the defendants in this suit in this court. It is proper to say that I have given this last question no consideration other than such is involved in the proprieties of the case. In short, I have not determined that this court has not the power to stay the suit in the State court, but only that the State may, so far as this court is concerned, if it sees fit, proceed with the prosecution of the suit in its own court. The motion, therefore, to enjoin the prosecution of the suit in the State court will be overruled.

JNO. H. ROGERS,
District Judge.

Sept. 2, 1899.

(Endorsed on back:) Filed in open court this Sept. 2, 1899. Thomas Boles, clerk.

151 *Petition for Appeal.*

In the Circuit Court of the United States for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS, Plaintiff,
vs.
KANSAS & TEXAS COAL CO. & ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Defendants.

The above-named plaintiff, State of Arkansas, conceiving herself aggrieved by the order entered on Feb. 1st, 1900, in the above-entitled proceeding, doth hereby appeal from said order to the Supreme Court of the United States, and she prays that her appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

BEN. T. DU VAL,
Attorney for Plaintiff & Appellant.

Fort Smith, Ark., Feb. 20, 1900.

And now, to wit, on 20 February, 1900, it is ordered that the appeal be allowed as prayed for.

JNO. H. ROGERS,
U. S. Dist. Judge.

(Endorsed on back): Filed Feb. 20th, 1900. Thomas Boles, clerk, by Florence Hammersly, D. C.

152 *Assignment of Error.*

In the Circuit Court of the United States for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS at the Relation of Jo. JOHNSON, Pl'ff,
vs.
KANSAS & TEXAS COAL COMPANY and ST. LOUIS & SAN FRANCISCO Railroad Company, Def'ts.

Now, on this 20th day of February, A. D. 1900, comes the State of Arkansas, by her attorney, Ben. T. Du Val, and respectfully represents that she feels herself aggrieved by the judgment of the circuit court of the United States for the western district of Arkansas and Fort Smith division thereof in this cause, and assigns errors therein as follows:

First. The court erred in refusing to remand said cause to the circuit court of Sebastian county for the Greenwood district and in taking jurisdiction over said cause, because under the Constitution and laws of the United States this cause was not removable from the said State court to this court.

Second. The court erred in dissolving the injunction granted and issued by the said State court against the above-named defendants or appellees.

Third. The court erred in dismissing the plaintiff's bill of complaint for want of equity on its face, and does not state a cause of action.

Fourth. The court erred in finding that the evidence did not sustain the allegations of the bill.

Fifth. The court erred in taking jurisdiction to hear and determine said cause, because under the Constitution and laws of
153 the United States the said court had no jurisdiction over the same.

Wherefore the said plaintiff or appellant prays this hon. court to examine and correct the errors assigned, and for the reversal of the said judgment of the said circuit court of the United States for the Fort Smith division of the western district of Arkansas in the above-entitled cause by the Supreme Court of the United States.

BEN. T. DU VAL,
Attorney for Appellant, Fort Smith, Ark.

(Endorsed on back :) Filed Feb. 20th, 1900. Thomas Boles, clerk, by Florence Hammersly, D. C.

154 *Stipulation of Counsel.*

In the District Court of the United States for the Western District of Arkansas, Fort Smith Division.

STATE OF ARKANSAS
vs.
THE KANSAS & TEXAS COAL CO. and THE ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

It is agreed and stipulated by and between Ben. T. Du Val, counsel for complainant, and Hill & Brizzolara, on the part of the defendants:

First. That the following affidavits, taken on the part of the plaintiff and read on motion to dissolve injunction before the judge who granted it, to wit: George Simmons, W. W. McCracken, J. H. Ferguson, W. J. Clifft, A. J. Burke, Sol. Lodge, Wm. Dennie, W. W. McCracken, George Simmons, T. F. Martin, George Bunch, O. T. Looper, Will McKowen, Jake Richie, W. F. Williams, Geo. A. Hutchenson, S. J. Jackson, J. N. Roberts, J. H. Davis, John J. Beggs, and the telegrams addressed to Jo. Johnson by O. C. Hartley, county clerk, and John R. Tanner, governor of Illinois, read on the motion to dissolve in the State court, shall be taken and considered by the court as evidence on the part of the complainants upon final hearing, all objections to the mode and manner of taking same to be waived.

It is further agreed that the testimony of F. E. Doubleday, taken before the Hon. Styles T. Rowe, judge of the circuit court for the

twelfth judicial circuit of Arkansas, and of Bennett Brown and Dan. Hogan, and affidavit of W. C. Hardestier, taken at the same time on a motion to dissolve the injunction, and the testimony of W. L. Warner and Bennett Brown, taken before this court on the 9th day of August, 1899, on motion to dissolve herein, shall be taken
155 and considered by the court as evidence on the part of the defendants, all exceptions and objections as to the mode and manner of taking same being waived.

And we agree to submit the case to the court for final decree upon the complaint, answer, replication thereto, and the foregoing testimony.

Jan'y 19, 1900.

BEN T. DU VAL,
Attorney for Plaintiffs.
HILL & BRIZZOLARA,
Attorney for Defendants.

(Endorsed on back:) Filed in open court 1, 19, 1900. Thomas Boles, clerk, by Florence Hammersly, D. C.

156 *Record Entries.*

In the Circuit Court of the United States for the Fort Smith Division of the Western District of Arkansas, June Term, 1899, Monday Morning, 9 o'clock, July 31, 1899.

Court met pursuant to adjournment.

Present: The Honorable Jno. H. Rogers, judge of the district court of the United States for the western district of Arkansas.

STATE OF ARKANSAS *vs.* KANSAS & TEXAS COAL COMPANY AND ST. L. & S. F. R'y Co.	In Equity. No. 121.

Ordered that B. T. Du Val, Esqr., be permitted to take out the papers in this cause.

Jos. M. Hill, Esq., attorney for defendant, files answer and motion to dissolve injunction issued by the State court and for restraining order against State authorities, and by consent of parties the hearing of these motions is set for August 8th, 1899.

MONDAY, *Aug.* 7, 1899.

(Caption omitted.)

Now, on this day, Col. Ben. T. Du Val, attorney for plaintiff, files motion to dismiss this cause.

TUESDAY, *August* 8, 1899.

(Caption omitted.)

Now, on this day, the motion of the plaintiff for an order to dismiss this cause, heretofore filed herein, is argued by Ben T. Du Val,

counsel for plaintiff, and J. M. Hill, for defendants, and submitted to the court and by the court taken under advisement.

WEDNESDAY, *Aug.* 9, 1899.

(Caption omitted.)

Now, on this day, comes B. T. Du Val, solicitor for the plaintiff, and files a motion to postpone the hearing of defendants' motion to dissolve the injunction granted herein by Hon. S. T. Rowe, judge of the 12th judicial circuit of Arkansas, and a motion for a full bench of this court at the hearing of said motion to dissolve. The court, after being fully advised in the premises, doth overrule each of said motions; to which rulings of the court the plaintiff excepts.

157 WEDNESDAY, *Aug.* 9, 1899.

(Caption omitted.)

Now, on this day, the motion to dissolve the injunction granted herein by Hon. S. T. Rowe, judge of the 12th judicial circuit of Arkansas, heretofore filed herein by the defendants in this cause, came on to be heard; whereupon the defendants are permitted to introduce testimony in support of their motion, and leave is granted the plaintiff to file counter-affidavits, and to defendants to file affidavits and responses thereto, and both parties are allowed to file briefs in this case.

SATURDAY, *Sept.* 2, 1899.

(Caption omitted.)

The motions to dissolve the injunction, to restrain the relator from prosecuting this suit in Sebastian circuit court for the Greenwood district, and to remand this suit to the State court having been heretofore, to wit, on the 9th day of Aug., 1899, submitted to the court upon the pleadings, affidavits, and oral testimony taken before the court, and the court having heard then the argument of counsel, took said motions under advisement; and now, being well and sufficiently advised in the premises, it is ordered, considered, and adjudged by the court that the plaintiff's motion to remand this case to the State court, whence removed, be, and the same is hereby, overruled; to which ruling the plaintiff at the time excepted. It is further ordered, considered, and adjudged by the court that the preliminary injunction herein granted in this case by the judge of the 12th judicial circuit of the State of Arkansas on the 23 day of April, 1899, be, and the same is hereby, dissolved, set aside, and held for naught; to which ruling the plaintiff at the time excepted.

It is further ordered, considered, and adjudged by the court that the motion of the defendants to restrain the plaintiff from prosecuting this suit in the Sebastian circuit court for the Greenwood district be, and the same is hereby, overruled, without any prejudice to defendants to renew said motion at any time that the plaintiff attempts

to take any steps therein contrary to the rulings of the court herein in holding that this court had properly acquired jurisdiction of the case by removal from said court.

158 THURSDAY, *Sept.* 14, 1899.

(Caption omitted.)

Comes plaintiff, by B. T. Du Val, and in open court files replication herein.

January Term.

FRIDAY, *Jan.* 19, 1900.

(Caption omitted.)

Comes counsel and files stipulation herein.

THURSDAY, *Feb.* 1, 1900.

(Caption omitted.)

On this 1st day of February, 1900, comes on this cause to be heard upon the bill, answer, replication, and the evidence, and the respective counsel file stipulation designating the evidence upon which the cause is heard.

The court, after hearing and considering the evidence adduced and identified in said stipulation of counsel, doth find:

1st. That the bill of the plaintiff lacks equity and does not state a cause of action.

To which finding plaintiff at the time excepted.

2nd. That the evidence does not sustain the allegations of the bill.

To which finding the plaintiff at the time excepted.

It is therefore considered, ordered, adjudged, and decreed by the court that the bill of the plaintiff, State of Arkansas at the relation of Jo. Johnson, prosecuting attorney, *vs.* Kansas & Texas Coal Co. and St. Louis & San Francisco Railroad Company be, and the same is hereby, dismissed.

To which judgment of the court the plaintiff at the time excepted.

159 TUESDAY, *Feb.* 20, 1900.

(Caption omitted.)

Comes the plaintiff, by B. T. Du Val, Esqr., and files petition for appeal and assignment of errors herein; whereupon said prayer for appeal is by the court granted.

160 The United States of America to the Kansas & Texas Coal Company and the Saint Louis and San Francisco Railroad Company, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, D. C., 30 days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the Fort Smith division, western district of Arkansas, wherein The State of Arkansas is plaintiff and appellant on appeal and you are defendants on appeal, to show cause, if any there be, why the judgment rendered against the said plaintiff and appellant, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 2nd day of April, in the year of our Lord one thousand nine hundred.

[The Seal of the Circuit Court, Western District of Ark., U. S. A.]

JOHN H. ROGERS,
United States Dis'ct Judge for the Western District of Arkansas.

Attest: THOMAS BOLES, *Clerk.*

FORT SMITH, ARKANSAS, *April* 4, 1900.

We accept service of the within citation this 4th day Apr'l, 1900.

THE KANSAS & TEXAS COAL CO.,
By HILL & BRIZZOLARA, *Att'ys of Rec.*
THE ST. LOUIS & SAN FRANCISCO RAILROAD CO.,
By B. R. DAVIDSON,
Per JOS. M. HILL.

[Endorsed:] No. 121. United States circuit court, western district of Arkansas. The State of Arkansas *vs.* Kansas & Texas Coal Co. *et al.* Citation. Filed April 4th, 1900. Thomas Boles, clerk.

161 UNITED STATES OF AMERICA, }
Western District of Arkansas, Fort Smith Division. }

I, Thomas Boles, clerk of the circuit court of the United States for the Fort Smith division of the western district of Arkansas, in the eighth circuit, hereby certify that the foregoing transcript annexed to this certificate is a true and complete copy of the pleadings, testimony, and proceedings had in the case of The State of Arkansas against The Kansas & Texas Coal Company *et al.*, the original of which remains of record in my office.

The Seal of the Circuit Court, Western District of Ark., U. S. A.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Fort Smith, in said district, this 2nd day of April, 1900.

THOMAS BOLES, *Clerk.*

[Ten cent U. S. internal-revenue stamp, canceled 4, 2, 1900. T. B.]

Clerk's Fees.

Fees in court	$8.15
Manuscript	58.10
	$66.25

Paid by plaintiff.

Endorsed on cover: File No., 17,722. W. Arkansas C. C. U. S. Term No., 252. The State of Arkansas, appellant, *vs.* The Kansas and Texas Coal Company and The St. Louis and San Francisco Railroad Company. Filed April 16th, 1900.

No. 42.

Supreme Court, U.S.
FILED
OCT 4 1901
JAMES H. McKENNEY,
Clerk.

Brief of DuVal for Appellant.

42

Filed Oct. 4, 1901.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1900.

STATE OF ARKANSAS,..... *Appellant.*

vs.....No. 252.

KANSAS & TEXAS COAL COMPANY, AND ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY,..... *Appellees.*

BEN T. DuVAL,
Of Counsel for Appellant.

IN THE

Supreme ~~CIRCUIT~~ COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

STATE OF ARKANSAS,..... *Appellant,*

vs..... No. 252.

KANSAS & TEXAS COAL COMPANY, AND ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY,..... *Appellees.*

ABSTRACT

This action originated in the Circuit Court of Sebastian County for the Greenwood District, State of Arkansas, on the relation of Jo Johnson, prosecuting attorney, by a complaint in equity against the above named defendants on the 23rd day of April, 1899, in which it was alleged,

(2) That the defendant railway company is a corporation under the laws of the State of Missouri, and operating a railroad in the County of Sebastian, State of Arkansas.

(3) That the defendant coal company is also a corporation under the laws of the State of Missouri, and owns and

operates a coal mine at Huntington in the District and County aforesaid.

(4) That a high state of excitement and condition of hot blood prevailed between the striking miners and their sympathizers in large numbers on the one side, and the coal company and its employees on the other.

(5) That the said coal company is threatening, and is about to import into said county and town of Huntington over the line of their co-defendant's railroad a large number of armed men of the low and lawless type of humanity, to-wit: about two hundred, to the great danger of the public peace, morals and good health of the said county and more especially of said town.

(6) That said threatened action on the part of the defendants, if permitted, will become a great public nuisance, and would destroy the peace, morals and good health of said county and town and would lead to riot and bloodshed, and to the dissemination of contagious and infectious diseases.

(7) That said county and town of Huntington are now enjoying peace, health and good order, and your relator believes that the loss of human life and untold expense to the taxpayers of said county on account of probable violations of the criminal laws, can and should be prevented by the power of the law.

The prayer is: That the defendant coal company be restrained and prohibited from importing or causing to be imported or brought into the said county; and that defendant railroad company be enjoined and restrained and prohibited

from importing, hauling or bringing, or causing to be imported, hauled or brought into said county, and from unloading or attempting to unload from any of its cars, any and all large bodies of armed, lawless or riotous persons, affected with contagious or infectuous diseases that might injure the peace, good order of good health of the state, or create a public nuisance in said county.

On the same day the judge of said court issued a temporary order of injunction in conformity with the prayer of the complaint; and the clerk also issued a writ of summons which was served on the agents of the defendants corporations.

[Tr., pages, 1-2-3-4.]

In support of the complaint the affidavits of the following named persons were filed: George Simmons, W. W. McCracken, [Tr., p. 4] J. N. Ferguson, W. J. Cliff, A. J. Burke, Sol Lodge, William Bunch, O. T. Looper, Willie McKowen, Jake Pitchie, W. F. Williams, Geo. A. Hutchens, S. J. Jackson, J. N. Roberts, J. K. Davis, John Beggs and W. C. Hardester, and copies of telegrams from different parties. [Tr., pages, 5-6-7-8-9-10], Which tend to establish the allegations in the complaint.

On the 18th of July, 1899, the defendants filed a petition and bond for the removal of the cause to the Circuit Court of the United States in and for the Fort Smith Division of the Western District of Arkansas.

[Printed Tr., pages 10-11].

It is alleged in said petition that the controversy in said suit is wholly between citizens of different States and that the suit is one arising under the constitution and laws of the United States, in this, that the Coal Company is engaged in the business of mining coal in the State of Arkansas, transporting and

selling the same as a business in the States of Texas, Kansas and Missouri, and is thereby engaged in inter-state commerce; that the defendant Railway Company is a common carrier, engaged in carrying passengers and freight through several States and Territories, and is thereby engaged in inter state commerce; that the petitioners are instruments of inter-state commerce, etc.; that they have a defense to said suit arising under the United States, and therefore, although the State of Arkansas is a party, this cause is removable to the United States Circuit Court aforesaid.

(Printed Tr., pages 12-13].

The court denied the motion to remove. (See opinion of Judge Rowe).

[Printed Tr., pages 1-15-16].

The defendants, notwithstanding, filed a certified transcrip of the record, etc., in the office of the Clerk of the United States Circuit Court aforesaid, and on the 25th day of July, 1899, notified Jo Johnson, attorney for the complainants, that they had filed the transcript, and would on the 31st day of July, 1899, at 10 o'clock, move for a dissolution of the injunction, and at the same time and place, move for an injunction against the complainants from prosecuting this action any further in the Sebastian Circuit Court for the Greenwood District, as the same had been removed to the Circuit Court of the United States.

[Printed Tr., page 18.]

From page 18 of the printed transcript to page 62, inclusive, is contained the affidavit of Bennett Brown, on the part

of the defendants, taken before his Honor, Styles T. Rowe, Judge of the Circuit Court of Sebastian County for the Fort Smith District, of which it is unneccary to make a full abstract, as the court below did not take into consideration any testimony in the case, but based his decision wholly upon the law involved.

On the 31st day of July. 1899, defendants filed their answer to the complaint, denying the facts alleged therein, and alleging that the injunction granted pursuant to the prayer of the complaint, violated the laws of the United States, and the Fourteenth Amendment to the Constitution, and that it interferred with the Inter State Commerce of the United States.

[Printed Tr., pp. 63-64-65.]

On the same day defendants filed a motion restraining complainant from in any manner, form or way, prosecuting or continuing to prosecute said suit, or any contempt proceedings therein, or any other matters or things relating to same in the Sebastian Circuit Court for the Greenwood District. [Printed Tr., pp. 65-66.]

And on the same day filed a motion to dissolve the injunction granted by the State court.

[Printed Tr., pp. 67-68.]

On the 17th day of August, 1899, the plaintiff, by her attorney, moved to dismiss this cause and strike the same from the docket.

First: Because the petition for removal and the transcript show that it is not removable under the laws of the United States.

Second: Because the State of Arkansas being plaintiff, and the defendants citizens of the State of Missouri, the court could not acquire jurisdiction on the ground of diverse citizenship.

Third: Because the record shows that it is not a civil action for the enforcement of a right arising under the Constitution or the United States or treaties.

Fourth: Because the defendant railway company is a domestic corporation and subject to the jurisdiction of the courts of the plaintiff.

[Tr. p. 67.]

On the 9th day of August plaintiffs attorney filed a motion to postpone further examination and trial of the cause until there was a full bench of judges, for reasons therein set forth.

[Tr., p. 68.]

And on the same day filed a motion to postpone the cause until the plaintiff had time to get ready for trial.

[Tr., page 69.]

On the 14th day of September plaintiff filed a general replication to defendant's answer.

[Tr., page 70].

Transcript, pages from 70 to 98 inclusive, contain the testimony of W. L. Warner, Bennett Brown, F. E. Doubleday and Dan Hogan, taken on the part of defendants, which it is unnecessary to abstract, for reasons given above.

The Court took the several motions referred to under advisement, and on the 2nd day of September, 1899, overruled the plaintiff's motion to remand the cause to the State court,

and dissolved the injunction granted by the said State court on the 23d day of April, 1899, and overruled the defendant's motion to restrain the plaintiff from the further prosecution of this action in the State court.

[Tr., pages 121-122.]

The opinion of the Court deciding the several motions aforesaid is contained in the transcript, pages 98-117, inclusive.

On February 1st, 1900, this cause was heard upon the bill, answer, replication, evidence and stipulation of counsel. On consideration whereof the Court adjudged that the plaintiff's bill be dismissed, because said bill of complaint lacks equity, and does not state a cause of action; and that the evidence does not sustain the allegations of the bill.

To which finding and decree the plaintiff at the time excepted.

[Printed Tr., page 122.]

On the 20th day of February, 1900, plaintiff filed petition for appeal from said judgment to the Supreme Court of the United States, and at the same time filed an assignment of errors, as follows:

First. The Court erred in refusing to remand said cause to the Circuit Court of Sebastian county, and in taking jurisdiction over said cause, because under the constitution and laws of the United States this cause is not removable from the State Court to this Court.

Second. The Court erred in dissolving the injunction of the State Court.

Third. The Court erred in dismissing the plaintiff's bill of complaint for want of equity on its face, and because it does not state a cause of action.

Fourth. The Court erred in finding that the evidence did not sustain the allegations of the complaint.

Fifth. Because the Court erred in taking jurisdiction to hear and determine said cause, because under the constitution and laws of the United States the said Court had no jurisdiction over the same.

[Printed Tr., pages 118-119.]

Stipulation of counsel in regard to the testimony.

[Printed Tr., pages 119-120.]

The petition and prayer for appeal is granted by the Court.

[Printed Tr., page 122.]

BRIEF AND ARGUMENT.

It will be seen by the foregoing abstract of the pleadings and proceedings that the court below sustained the defendant's motion to dissolve the injunction granted by the State court. His reasons for this action are contained in an elaborate opinion, beginning on page 89 of the printed transcript and ending on page 117. The record entry is found on pages 121-122. The final judgment of the Court will be found on page 122. The assignment of errors will be found on pages 118-119 of the printed transcript.

The questions presented to this Court for decision are contained in the assignment of errors as above stated.

First—The Court Ought to have Remanded the Case to the State Court.

The Court below held that, in determining whether or not the case is a suit of a civil nature arising under the constitution and laws of the United States or treaties must be by an examination of the complaint itself.

Second—The Complaint Did State a Cause of Action.

The complaint states that a high state of excitement and hot blood prevailed between the striking miners, and their sympathizers on the one side, and the coal company and its employees on the other. That the coal company is threatening to import over its co-defendant's railroad large numbers of armed men of the low and lawless type of humanity, to the great danger of the public peace, morals and good health of said county and town, which would become, if allowed, a great public nuisance and destroy the peace, morals and good health of the community and lead to riot, blood-shed and the dissemination of contagious and infectious diseases. That the county and town were then enjoying peace, health and good order, and unless the threatened action of defendants was restrained it would result in the loss of human life, and untold expenses to the tax-payers on account of the violation of the criminal laws, and that these calamities should be prevented by the power of the law. The complaint prays for a temporary restraining order until a hearing of the case could be had. The circumstances as set forth in the bill were of an alarming and

threatening character, to the peace, good order, health and quiet of the community. The miners who had previously been engaged in the mines of defendant coal company were on a strike; and they and the coal company and its employees were arrayed in hostility to each other; and a high state of excitement and hot blood prevailed. In this critical state of affairs it is alleged that the defendants were about to bring into the community an element which would precipitate conflict and blood-shed; to-wit: A large number of armed men of the low and lawless type of humanity.

The statements contained in the bill of complaint show that the community referred to was quiet and peaceable, but threatened with a bloody conflict between the opposing forces and the acts threatened by the defendants would inevitably produce an armed conflict resulting in blood-shed and destruction of property. The purpose of the bill was to prevent this, and the remedy invoked was intended not to extend beyond the legitimate scope of an injunction; that is, to prevent the threatened danger. It was certainly not intended to permanently interfere with the defendant's legitimate exercise of their rights under the laws and Constitution of the United States, and of the State of Arkansas. We think that the defendants were unnecessarily alarmed, and their apprehension that the State intended to interfere with their rights under the Inter-State Commerce laws was unfounded. All of the arguments presented on that line by counsel are, in the language of the court below, "purely speculative." The danger was described in the complaint to be imminent to the peace and safety of

persons and property in the locality so endangered, the prevention of which was urgent; no other remedy would be adequate except an injunction. It is the remedy invoked by corporations for the protection of their property, and the preservation of the lives of their employees. If the statements contained in the complaint in this cause were well founded, it was the duty of the officers of the law to prevent the danger; and hence we insist it did state facts sufficient to constitute a cause of action.

Third—The Evidence Does Sustain the Allegations of the Bill.

The testimony of Bennett Brown, superintendent of defendant's coal company, shows that there was danger of trouble between the mine owners and the striking miners at the time of the filing of the complaint; that he wrote to the president of the company advising him not to insist upon sending in foreign labor, but did not say that it would cause riot and blood-shed, but did say that there would be trouble.

[Printed Tr., p. 30.]

And it was his opinion that unless there was a sufficient force to pretect the men from any attack that might be made upon them, that there would be trouble; that was the opinion expressed to the sheriff.

[Printed Tr., page 3].

He also testified that he had called on the sheriff for guards to protect the men in the employment of the company.

The reply to this question by the Court:

"Suppose you had shipped in two or three—we will sup-

pose one, two, or three—cars loads of miners on Monday last, what would have been the condition at Huntington and in this county, and that they were negroes?"

Answer: *"Well, I would have been very glad if I was able to say that everythtng would have been peaceable and quiet. I am rather inclined to the opinion that unless, as expressed to Sheriff Harrell, there had been a manifestation of a sufficient force to keep the peace under any circumstances, especially since I have been informed of the miners from Jenny Lind and Bonanza doing what they did, that there might have been a little fun."*

[Printed Tr., p. 35.]

The testimony of this witness shows that there was a state of "excitement and hot blood," as alleged in the complaint, and it also appears that the mine owners obtained from the Federal court an injunction against the striking miners. The testimony of this witness alone sustains the allegations of the bill of complaint, and that the court erred in dismissing the bill upon that ground.

Fourth—The Court Also Found That the Bill of Complaint Lacked Equity, and Did Not State a Cause of Action.

The testimony of the ~~plaintiff's~~ defendants witness as before stated shows that every allegation in the plaintiff's complaint is true, that is, there would have been danger of a conflict between the striking miners on the one side, and the coal company and its employees on the other, which was caused by the threatened importation by the defendants of foreign labor to work in the

mines. In this condition of things plaintiff filed her complaint against the defendants to enjoin them "from importing, hauling, or causing to be imported, hauled or brought into the circuit, or bringing, or from unloading or attempting to unload from its cars in said county any large bodies of armed or lawless persons affected by contagious diseases, that might endanger the peace, good order, or good health, of the State, or create a public nuisance in said county or circuit." To defeat this action defendants have invoked the Inter-State Commerce law and the Fourteenth Amendment to the Constitution of the United States. All that was asked in the first instance was a temporary restraining order, and instead of meeting the contention in the State Court upon the facts, defendants removed this cause to the United States Court, notwithstanding a large mass of testimony had been taken by the State Court before the filing of the petition for removal. It cannot be successfully contended that the Inter-State Commerce law, or the Fourteenth Amendment to the Constitution, authorizes anyone to introduce into any community, into a State, the class of persons described in the complaint in this cause, nor that the State Court has no power by injunction to avert the calamities which might flow from the introduction of such characters. It is not contended now, nor was it in the Court below, that the State Court, or any Court, could prevent persons coming into the State by any process except where the presence of such persons would produce conflict, riot and bloodshed, disease and disorder, "and that the danger was so imminent and threat-

ening that no other peaceable means would prevent the occurrence except injunction."

No one can examine the testimony without being convinced that disorder, riot and bloodshed between the opposing parties would have occurred, had it not been prevented by the temporary restraining order of the State Court. The testimony shows that immediately after the granting of the injunction in the State Court, an injunction was granted by the Federal court at the instance of the mine owners against the striking miners, restraining and enjoining them from destroying or attempting to destroy the property of the mine owners, or interfering with their business in any manner.

The injunction of the Federal Court was based upon the allegation that the striking miners were threatening to do them an irreparable injury, and placed the defendants (the strikers) under the control of the Federal court, subject to be prosecuted for any disobedience of the commands of the writ.

The issuance of writs of injunction by the Federal Courts, is based upon the contention that the ordinary administration of the criminal law is not adequate for the protection of the property of the plaintiff—a doctrine which, until the last few years, has had no recognition in this country. It would be a strange construction of the Constitution and laws of this great nation to hold that the property and employees of private corporations are entitled to protection by injunction, and that the State Court would be powerless to afford protection to a peaceable community threatened with riot, bloodshed and disease, as alleged in the plaintiff's com-

plaint in this cause. If the contention of the counsel for defendants, and the decision of the Court below are correct, any corporation or individual might bring within the borders of the State the class of people described in the plaintiff's complaint, and the State would be powerless to protect itself or its citizens by injunction.

Fifth: *The Court erred in overruling the motion to dismiss or remand this cause to the State Court, for causes set forth in the plaintiff's motion.*

[Printed Tr., page 67.]

The Court in its opinion held that the State of Arkansas being plaintiff and the defendants being citizens of the State of Missouri, it could acquire no jurisdiction, on the ground of diverse citizenship; but held the case altogether upon the ground that it was a civil action under the constitution and laws of the United States.

In the elaborate opinion of the Court, heretofore referred to, in order to retain its jurisdiction over this case, cites numerous decisions of this Court, to show that acts of the State legislature to permanently exclude certain classes of persons, are constitutional, but others, conflicting with the inter-state commerce clause, or the Fourteenth Amendment, are void.

We have examined all the authorities cited by the Court below, in fact, had cited a large number of them in our argument before the Court. We admit that there is no plainer proposition than that the jurisdiction in this case depends upon whether the suit is a civil action for the enforcement of a right arising under the Constitution and laws of the United States

or treaties thereof made under their authority, or arising under the Constitution, laws and treaties aforesaid. The cause was retained on the ground that upon the face of the complaint it showed such to be the case. The Court so decided; that is, the court decided that on the face of the plaintiff's complaint it appears that a construction of the Inter-State Commerce clause, and of the Fourteenth amendment to the Constitution are both involved, "and that the correct determination of the cause makes it necessary to construe this provision of the Constitution of the United States, and that the construction placed upon them must necessarily settle the controversy. This conclusion determines the fate of the motion (to remand). It is overruled." The judgment of the court is illogical and erroneous in holding that the bill lacks equity, and does not state a cause of action, and at the same time that it states a cause in which the construction of the Inter-State Commerce clause, and of the Fourteenth amendment, are both involved It could not assert a right under the Constitution and laws of the United States, and the treaties thereof, unless it did state *a cause of action.* The judgment of theCourt below may be correct, but its reasoning is not. The Court, after much research into the authorities, and a close and critical annalysis of the complaint and its statements and style, did refuse to dismiss or remand this cause to the State Court; because it did contain a statement of facts which "constituted an action within the Court's jurisdiction; a correct determination of which made it necessary "to construe the Fourteenth Amendment to the Constitution of the United States, and the inter-state commerce laws."

On pages 107-108, of the printed transcript, the Court criticized the plaintiff's complaint with something like severity, hence it must be assumed that the learned Judge did not inadvertently adjudge that the "bill lacked equity, and did not state a cause of action". The Court, on page 117, printed Tr., announced, "from the conclusion arrived at by the Court it is obvious that the injunction in this cause must be dissolved; no amount of proof that may be offered could possibly change the result already reached". On page 116, printed transcript, the Court held that "inasmuch as the State had passed no statute prohibiting admission of the class of people described in the complaint, that *the Company had a right under the Fourteenth Amendment and under the commerce clause of the Constitution, to introduce or import that class of persons, notwithstanding their presence might result in the loss of human life; become a public nuisance; destroy the peace, morals and good health of the county and town, and lead to riot, bloodshed and the dissemination of contagious and infectious diseases*". On page 116 printed transcript he states: "In the opinion of the Court, it is not within the power of any Court, State or Federal, to prescribe what rules and regulations are needful to the welfare, peace, health, safety and morals of the State, or to determine without legislation what class or classes of persons may lawfully come thereto".

Justice Grier, in the Passenger cases, 7th Howard, U. S, 462, quoted by the Court below, 109-110 printed transcript, says: "The right of a State to exclude *convicts, lepers, and persons affected with incurable diseases, paupers idiots, lunatics*

*and others * * * has its foundation in the sacred law of self-defense, which no law of Congress could restrain or annul."*

It is true that the question before the Supreme Court in that case was the constitutionality of an Act of the Legislature of New York to exclude the class of people above referred to.

We think there is a wide difference between the acts of a legislature to permanently exclude certain persons, and prohibiting them from coming into the State, and the action of a Court by injunction to avert a threatened and imminent calamity to the citizens; and thereby stay the commission of the threatened act until the question could be thoroughly investigated. No one could doubt, (unless it be the court below), that it was not only a right, but a duty of the court and the officials of the county, to take all lawful precautionary measures to preserve the peace, morals and safety of the people. We think it cannot be successfully demonstrated that such action would be a violation of the Fourteenth Amendment, or the Inter-State Commerce law, or that the Government of the United States intended such a construction should be put upon them. The foundation of the rights of the State Court to act as it did in this cause is, in the language of this Court, "The sacred law of self-defense, which no power granted to Congress can restrain or annul." The authorities cited by the court below upon this subject refer exclusively to acts of the legislature, intending permanently to exclude persons and property from the limits of a state.

The Court below holds that until the Legislature shall pass a law, under the authority of the Police power, any individual or corporation may import into the State "large numbers of armed men of the low and lawless type of humanity, to the great danger of the public peace; to become a great public nuisance, and destroy the peace, morals and good health, and to cause riot and bloodshed and the dissemination of contagious and infectious diseases."

He says: "No statute of this State condemns the coming of such men hither. No expression of the Legislative will relating to that class of men coming into this State has found a place in onr laws. They are silent on that subject." * *

It is enough now to say that under the Fourteenth Amendment and the commerce clause of the Constitution, they now have that right.".

It is to be sincerely hoped that the Court below will always enjoy a monopoly of such opinions.

THE COURT ERRED IN DISSOLVING THE INJUNCTION ISSUED BY THE STATE COURT.

We contend and have shown that the bill did state facts constituting a cause of action, which was sustained by the evidence; and we now proceed to show that the statements in the complaint did not contain a federal question.

The counsel and the Court treated the case as one arising under the police powers of the State. That power belongs to the legislature of the State, "and must be exercised within Constitutional bounds." There was no such question presented.

The jurisdiction of the Court to issue an injunction or temporary restraining order upon the facts stated in the complaint does not depend upon legislation, either State or National.

As before stated, the allegations presented showing the existence of a "*high state of excitement and hot blood*," which the acts threatened by the defendants, (if not prevented), *would lead to riot, bloodshed, etc.*" The danger was urgent, too urgent to wait for convening of the legislature to exercise the police power of the State;—even too urgent to be suppressed by the State troops. The remedy adopted, and which proved effectual, was the exercise of "sacred law of self-defense, which no power granted to Congress can restrain or annul"; a right recognized and proclaimed in this Court in the Passenger cases.

7th Howard, 462.

The facts alleged in the bill of complaint did not state a case arising under the constitution and laws or the United States, and as the State of Arkansas was a party it should have been remanded to the State Court. And in support of this point we call the attention of this Court to the able opinion of the Judge of the State Court, (Hon. S. T. Rowe) on pages 14-15-16, Printed Transcript.

The Court below, we think, erred in taking jurisdiction at all, and if we are right in this, it follows that the case should be reversed, with iustructions to remand to the State Court.

The learned judge of that Court below, usually so calm and deliberate, mistook the character of the case, and allowed his imagination to mislead him.

Tested by the rules laid down by this Court in the following cases it is clear that there was no federal question presented in the bill, and as the State of Arkansas was a party, the Court below erred in taking jurisdiction.

"The record must show all the facts essential to give the Court jurisdiction, else the court has no authority to assume jurisdiction."

Todd v. Cleveland & Mahoney Valley Railway Co., U. S. Appeals, 707.

"Under the Act of March 3rd, 1887; c. 373, and August 13, 1888, c. 866, a case not depending upon the citizenship of the parties, nor otherwise especially provided for, cannot be removed from a State Court into the Circuit Court of the United States, as one arising under the Constitution of the United States, unless the fact appears by the plaintiff's statement of his own claim.

Chappell v. Waterworth, 155 U. S., 102.

MUST APPEAR IN CLAIM: Under the Acts of March 3, 1887, c. 373, and August 13, 1888, c. 866, a case not depending on the citizenship of the parties nor otherwise specially provided for, cannot be removed from a State Court into the Circuit Court, as one arising under the constitution, laws or treaties of the United States, unless that appears by the plaintiff's statement of his own claim. The statement of that fact in the petition for removal, or in a subsequent pleading, is not sufficient.

Postal Telegraph Cable Co. vs. U. S., 155, U. S., 482.

GROUNDS MUST APPEAR IN CLAIM: "The fact that a case arises under the Constitution of the United States must appear from the plaintiff's statement of his own claim; and if it does not so appear, the want cannot be supplied by any statement in the petition for removal, or in subsequent pleadings."

East Lahe Land Co. v. Brown, 155 U. S., 488.

"On an application for removal from a State to a Federal Court, the Federal question, or the Federal character of a defendant company, must appear from the complaint in the action in order to justify a removal.

Ogden Short Line & Utah N. Ry. v. Skottowe, 162 U. S., 490.

"This action, although brought upon the relation of Jo Johnson, as Prosecuting Attorney for the 12th Judicial Circuit, is really a suit brought by the State, and therefore not removable on the ground of citizenship under the Act of March 3, 1887, or August 13, 1888."

Ferguson Shoe Inspection v. Ross et al., 38, Fed. 161.

"A suit instituted by the State in one of its own Courts against a citizen of another State is not removable on the ground of diverse citizenship of the parties.

Alabama v. Wolffe, 18, Fed. 836.

Germania Insurance Co. v. Wisconsin, 119 U. S., 473.

Starin v. New York, 115 U. S., 248.

Ames v. Kansas, 111 U. S., 449.

And numerous other dcisions of the Supreme Court of the United States establishing the same doctrine.

"Therefore, a suit by the State in one of its own Courts cannot be removed to the Federal Courts under the Acts of 1875, 1887 and 1888, unless it arises under the constitution or laws of the United States. To give jurisdiction to a United States Circuit Court of the case by removal from a State under Act of 1875 the construction of the constitution or a law or treaty of the United States must be directly involved in it."

Parsons v. Dunham, 121 U. S, 421.

Starin v. New York, et supra.

We respectfully insist that the Court below erred—and its judgment should be reversed with instructions to remand.

This case involves questions of supreme moment to the people of the States, and we invoke the careful consideration of this high Court, to the end that no doubt may hereafter arise.

BEN T. DuVAL,

Of Counsel for Appellant.

No. 142.
Supreme Court U. S.
FILED
OCT 21 1901
JAMES H. MCKENNEY,
Clerk.
Brf. of Hill, Brizzolara & Sherwood for Appellees.
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Filed Oct. 21, 1901.

IN THE SUPREME COURT OF THE UNITED STATES

THE STATE OF ARKANSAS, APPELLANT,

vs.

THE KANSAS AND TEXAS COAL COMPANY, *ET AL*, APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT, WESTERN DISTRICT OF ARKANSAS, FORT SMITH DIVISION.

BRIEF FOR APPELLEES

HILL & BRIZZOLARA,
Attorneys K. & T. Coal Co.

ADIEL SHERWOOD,
of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES

STATE OF ARKANSAS, APPELLANT,

vs.

KANSAS AND TEXAS COAL COMPANY AND THE ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, APPELLEES.

STATEMENT

On the 23rd day of April, 1899, the following complaint was filed in the Sebastian Circuit Court for the Greenwood District, to-wit:

STATE OF ARKANSAS, Plaintiff,
vs.
Kansas and Texas Coal Company, and Saint Louis & San Francisco Railroad Company, Defendants.

Complaint in Equity.

1. The plaintiff, The State of Arkansas, on the relation of Jo Johnson, Prosecuting Attorney for the Twelfth Judicial Circuit, for her cause of action alleges:

2. That defendant, Saint Louis and San Francisco Railroad Company is a corporation organized under the laws of the State of Missouri, owning and operating a railroad in the Twelfth Judicial Circuit of Arkansas, and more particularly in Sebastian County, of said Circuit.

3. That defendant, Kansas and Texas Coal Company is a corporation, duly organized under the laws of the State of Missouri, owning and operating a coal mine at Huntington, in the Greenwood District of Sebastian County.

4. That a high state of excitement and condition of hot blood now prevails between the striking miners and their sympathizers in large numbers on the one side, and said Coal Company and its employees on the other.

5. That said Coal Company is threatening, and is about to import into said county and town of Huntington, over the line of their co-defendant's railroad, a large number of armed men of the low and lawless type of humanity, to-wit: About two hundred, to the great danger of the public peace, morals and good health of said county, and more particularly of said town.

6. That said threatened action on the part of said defendant, if permitted to be executed, would become a great public nuisance and would destroy the peace, morals and good health of said county and town—would lead to riot, blood shed and to the dissemination of contagious and infectious diseases.

7. That said county and town of Huntington are now enjoying peace, health and good order, and your relator believes that the loss of human life and untold expenses to the taxpayers of said county on account of probable violation of the criminal laws can and should be prevented by the power of the law.

8. Wherefore your relator prays:

1. That the defendant Kansas and Texas Coal Company, its agents, servants and employees, and each of them, be restrained and prohibited from importing or causing to be imported or brought into Sebastian County or the Twelfth Judicial Circuit of Arkansas, and that the Saint Louis and San Francisco Railroad Company, its agents, servants and employees—each, both and all of them—be enjoined, restrained and prohibited from importing, hauling, or bringing or causing to be imported, hauled or brought in the said county or circuit, and from unloading or attempting to unload from any of its cars in said county or circuit, any and all large bodies of armed, lawless or riotous persons, affected with contagious or infectious diseases that might endanger the peace, good order, or good health of the State, or create a public nuisance in said county or circuit, under the pains and penalty of the law;

2. That a temporary restraining order be issued; and that—

3. Upon final hearing said restraining order be made perpetual, and that the State have and recover her costs.

This complaint was verified by the oath of the relator. (Printed Record p. 2.)

The Circuit Judge granted the injunction, as prayed in the writ, against the defendants.

No affidavits were filed other than the verification of the prosecuting attorney to the complaint.

The affidavits in the record were taken in subsequent proceeding, as is shown by the dates of the same, all of the same being verified subsequent to the date of the filing of the complaint and the issuance of the order of injunction.

On the first day of the ensuing term of the Sebastian Circuit Court the defendants filed a petition and bond for removal to the United States Circuit Court for the Western District of Arkansas. Under the Arkansas practice the defendants had the first three days of the term in which to answer, and the petition and bond for removal were filed on the first day of the term within that time.

The substance of the petition for removal was as follows:

1. It set forth the diversity of citizenship between the relator, who was a citizen and resident of the Western District of Arkansas, Fort Smith Division thereof, and the defendants, each of whom were corporations organized under the laws of the State of Missouri.

2. That the suit was one arising under the Constitution and laws of the United States in this, that the Coal Company was engaged in the business of mining coal in the State of Arkansas, and transporting and selling the same therefrom in the States of Texas, Kansas and Missouri, and was engaged in interstate commerce: That the railroad company was a common carrier and engaged in carrying passengers and freight from and through the states of Arkansas, Missouri, Kansas, Texas, Indian and Oklahoma Territories, and engaged in interstate commerce. That the said defendants were instruments of interstate commerce, and that for the purpose of such commerce under the interstate commerce clause of the Constitution of the United States and the laws passed in pursuance thereof, they had the power and right, each to conduct its respective business, and to operate its mines, and transport and sell coal and transport passengers and freight, free and untrammeled from any and all restraints and conditions sought to be imposed upon them in this action. That this action is an attempt on the part of the plaintiff to interfere with and restrain the petitioners from carrying on their businesses aforesaid, and that it is in restraint of, and an abridgment upon, the rights and immunities enjoyed by them under the interstate commerce

laws of the United States, and in violation thereof, and that said action creates a substantial and serious burden upon interstate commerce.

3. That the suit is one arising under the Constitution and laws of the United States, and that the petitioners have a defense thereto arising under the laws of the United States. (Printed Record pp. 11-13.)

The petition for removal was duly verified and a sufficient bond given.

The State Court refused to grant the removal. (Printed Record pp. 14-16.)

The defendants took a transcript of the record and filed the same in the United States Circuit Court for the Western District of Arkansas, and gave the plaintiff notice thereof. (Printed Record pp. 17.)

The defendants filed answer in the United States Circuit Court. (Printed Record pp. 63-65.) And the petitioners filed replication thereto. (Printed Record p. 70.)

The first paragraph of the answer was a general demurrer to the complaint. This is permitted under the Arkansas practice.

It is not necessary to go into the other defenses presented in the answer, as the case was not tried, being determined upon the motion to remand and the demurrer and motion to dissolve the injunction.

The plaintiff filed a motion to remand. (Printed Record p. 67.)

The defendants filed a motion to dissolve the injunction. (Printed Record pp. 67-68.)

The Court held in substance that the cause was properly removed and it was not necessary to go into any question of the evidence, that no amount of proof sustaining the allegations of the complaint would entitle the plaintiff to the injunction prayed, and dissolved the same. (Printed Record p. 117.)

The evidence in the record consists of affidavits taken after the issuance of the injunction and testimony taken in the State Court on a preliminary motion which was treated as evidence on the hearing of the case in the United States Circuit Court, but as none of the evidence was considered, and only questions of law were passed upon, and that is all that is before this Court, no further attention will be paid to the evidence adduced.

While there are two questions raised, one as to the jurisdiction of the United States Circuit Court, and the other as to the dissolution of the injunction, they are, in fact, the same question, which is whether or not the complaint shows upon its face that a Federal question was raised,

and if it does show the same upon its face, it also shows that there was an attempt made on behalf of the plaintiff to assert rights contrary to the Constitution and laws of the United States. Therefore, the questions will be discussed as one.

I

THE OBJECT AND MEANING OF THE COMPLAINT.

We accord full sway to the oft repeated decisions of this Court, which hold that the presence of a Federal question must be tested by the complaint alone. To the complaint, however, must be added the facts of which the court takes judicial cognizance.

(*a*) JUDICIAL KNOWLEDGE

Judicial knowledge will be taken of the boundaries of the State where the Court sits, and of the judicial district and of the municipal sub-divisions within it.

Hoyt v. Russell, 117 U. S., 401.

Likewise of the judicial districts into which the State is sub-divided.

Ry. v. Hyatt, 48 Neb., 161, s. c. 67 N. W. Rep. 8.
People v. Robinson, 17 Cal., 363.

Judicial cognizance is taken of the geography of the country, especially the local geography, the distance between towns, and the location of established cities and towns.

Peyroux v. Howard, 7 Peters, 324.
Ins. Co. v. Robinson (8th Ct. Ct. of Appeals) 58 Fed. Rep., 723.
State v. Wabash Paper Co., 21 Ind. App. Rep. 167.
Woodard v. Ry., 21 Wis., 309.
Winnipiseogee Lake Co. v. Young, 40 N. H., 421.
Bruson v. Clark, 151 Ills., 495.
Ry. Co. v. Pierce, 95 Ind., 497.
Ry. v. Case, 15 Ind., 42.

The location of established railroad lines and routes, being public highways, become "notorious and undisputable," so that Courts take judicial knowledge of them, as they do of the great natural highways, the rivers, bays and oceans.

Ry. v. State, 72 Tex., 404. s. c. 13 Am. St. Rep. 815.
Miller v. Ry., 83 Tex., 518.

It follows that the court where this suit was filed and the court to which the same was removed, knew the following facts:

The St. Louis & San Francisco Railroad is one of the great public highways of the Southwest, running out of St. Louis, Missouri. One part of that system is located through the State of Arkansas, said line leaving the parent stem at Monett, Missouri, and continuing southwesterly to Paris, Texas. It passes through Fort Smith, Arkansas, and thence south along and across the Arkansas state line to Jenson, thirteen miles from Fort Smith. At this station the line divides, one branch running through the Indian Territory to Paris, Texas, and the other running back into the State of Arkansas nineteen miles to its terminus at Mansfield, which is a town on the line between Scott and Sebastian Counties, Arkansas. No other line of road was at Mansfield at this time, and no line of railroad was in Scott County other than the terminus of this road at the border. Between Jenson and Mansfield is the town of Huntington, of about 1,500 population. The Twelfth Judicial Circuit of Arkansas, is composed of the counties of Scott and Sebastian. To take passengers to Huntington, from without the Twelfth Judicial Circuit, over the defendant's road, they must be carried into the Indian Territory to Jenson, thence to Huntington.

(*b*) MEANING OF IMPORT AND IMPORTING.

The gist of the complaint is found in the 5th paragraph and in the prayer.

After reciting that there is great excitement between the striking miners and their sympathizers on one side and the coal company and its employes on the other, the fifth paragraph alleges:

"That said Coal Company is threatening and is about to import into said county and town of Huntington, over the line of their co-defendant's railroad, a large number of armed men of the low and lawless type of humanity, to-wit: About two hundred, to the great danger of the public peace and morals, and good health of said county, and more particularly of said town."

The prayer is that the defendant Coal Company be restrained and prohibited from importing, or causing to be imported or brought into Sebastian County, or the 12th Judicial District of Arkansas, and that the railroad company be enjoined, restrained and prohibited from

importing, or bringing, or causing to be brought, or imported into said circuit, and from unloading or attempting to unload from any of its cars in said county or circuit any and all large bodies of armed, lawless or riotous persons, or persons affected with contagious or infectious diseases that might endanger the peace, good order or good health of the State, or create a public nuisance in said county or circuit.

When the word import is used as a noun it means property, and it cannot properly be applied to a free man. But, as used by the pleader in this case, and such use is not uncommon, it was obviously intended to use it in such sense. A discussion of the use of this word may be found in the case of the *People of New York vs. Compagnie Generale Trans-Atlantique, 107 U. S., 59.*

When the word "import" is used as a verb, it goes back to the derivative meaning, which is to "bring in". The Standard dictionary defines it as a verb as follows:

"To bring from a foreign country, or State, into one's own country or State; introduced from abroad, especially; commercially; opposed to export, as to import woolen goods; to import labor."

Webster defines it as follows:

"To bring in from abroad; to introduce from without, and especially to bring, as wares and merchandise, from another State or country in the transaction of commerce; opposed to export. We import teas and silks from China, wine from Spain and France and dry goods from Great Britain."

The lay definitions above are accepted as correct legal definitions, and "import" has been used in acts of Congress and in the courts as meaning to bring from abroad persons, especially laborers. Thus in the Alien Labor Contract Act, 23 Statutes at Large, 332, the title is: "An Act to Prohibit Importation and Migration of Foreigners and Aliens under Contract or Agreement, to Perform Labor in the United States, its Territories and the District of Columbia." In section 1 of said act it was made unlawful for persons or corporations "to prepay, transport or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States, its Territories or the District of Columbia, etc." This act has been twice before the court in the cases of *Rector and Wardens of the Church of the Holy Trinity vs. U. S., 143 U. S., 457, and United States vs. Laws, 163 U. S., 258*, and in both of said cases the court treated the act as prohibiting the importation or bringing

into this country from foreign countries a certain class of laborers, under contract or agreement.

While upon the circuit Chief Justice Marshall had before him a case which called for the interpretation of the Act of February 28, 1803, entitled "An Act to Prevent the Importation of Certain Persons into Certain States Where, by the Laws Thereof, Their Admission is Prohibited," and he discusses the use of the verb "import" therein.

Wilson vs. U. S. 1 Brock, 423, s. c. 30 Fed. Cases, No. 17846.

We take it that these authorities sufficiently show that the verb "import" means to bring into the State from another State or foreign country. We take it that the location of the railroad company's line and the localities to be affected necessarily show that it was to prohibit the defendant Coal Company from bringing into the State of Arkansas, over the line of the defendant Railroad Company, persons from other States, Territories or countries, than the State of Arkansas. The geographical location of the line shows that necessarily they would have had to have been brought into the Indian Territory, thence into Arkansas again, even if they were started at any point in Arkansas. But the obvious intent and meaning of the importation of labor referred to was labor from other States or other countries. Such is the only meaning that can be placed upon the term "import," and that is strengthened, if strengthened it need be, by the fact that these laborers could not be brought into the town of Huntington over this line of railroad without first being brought through some other territory than the State of Arkansas in bringing them there.

This being the case, then the question is fairly presented by the complaint whether the State of Arkansas has the authority to prevent the coal company and the railroad company from bringing into the State over the line of this railroad laborers from other States or foreign countries.

The counsel for the State, in his argument in this court, claims that the State has the authority to do so, and to do so by injunction, and that the authority for such action is to be found in the police power of the State. We will therefore invite attention to that proposition.

II.

POLICE POWER OF THE STATE.

The line separating the police power of a State and the power of the general government in regulating interstate

commerce has been difficult to trace, and has received the attention of our greatest jurists from the beginning of our judicial history to the present time.

One of the earliest and greatest cases which touches upon this line is the decision of Chief Justice Marshall in *McCulloch vs. State of Maryland, 4 Wheaton, 316*, where the power of Congress to establish a bank and the power of the State to tax that bank, was considered.

In *Gibbons vs. Ogden, 9 Wheaton. 1*, it was held by the Court, through the Chief Justice, that wherever a State statute invades the domain of legislation which belongs to Congress that it is void, notwithstanding such statute may be in the exercise of the police power of the State.

In *Brown vs. State of Maryland, 12 Wheaton, 420*, another decision by Chief Justice Marshall, the right of the State of Maryland to levy a tax upon imports was considered, and it was held that no such power existed in the State, however indirectly it might be exercised, because it trenched upon the power of Congress to regulate commerce between foreign nations and the several States.

The "*License Cases*," *5 Howard, 504*, is one of the land marks in our jurisprudence. Chief Justice Taney delivered the opinion; and he had been counsel for the State of Maryland in the Brown case, and in the course of the opinion stated that the decision of Chief Justice Marshall in that case had convinced him that he was wrong in the views which he had urged upon the Court as counsel for the State of Maryland.

Chief Justice Taney recognizes the impossibility to mark, by a certain and distinct line, the division between foreign or interstate and domestic commerce, and to fix the precise point in relation to every imported article where the power of Congress terminates and that of the State begins, and that, as the Constitution itself does not attempt to define the same, it is necessarily a question for judicial decision.

This conclusion carried to its logical end would necessarily bring into this case a Federal question, as it would call for a decision by the courts of the legitimacy of the attempted exercise of the police powers of the State, and call for an adjudication whether such exercise was within the power of the State or whether it was an invasion of the interstate commerce clause of the Federal Constitution. Whenever a complaint sets forth such a state of facts, then a Federal question is presented by it, which entitled the parties thereto to have such question passed upon by the Federal tribunals.

In *Bowman vs. Railroad, 125 U. S., 465,* this Court through Mr. Justice Matthews said:

"However this may be, the rule has been asserted with great clearness that whenever the subjects over which a power to regulate commerce is asserted are in their nature national, or admitting of one uniform system or plan or regulation, they may justly be said to be of such a nature as to require exclusive legislation by Congress. *Cooley vs. Port Wardens, 53 U. S., 12 How, 299; Crandall vs. Nevada, 6 Wall. 42.* Surely transportation of passengers or merchandise through a State, or from one State to another, is of this nature."

It was held in *Cooley vs. Port Wardens, 12 How., 299,* that the regulation of commerce with foreign nations and between the States, was equally given to Congress, and that laws infringing upon either were void.

In *Hannibal & St. Jo R. R. vs. Husen, 95 U. S., 465,* a statute of the State of Missouri prohibiting the importation of Texan, Mexican or Indian cattle was brought before this Court to consider whether it invaded the right of Congress to regulate commerce. The court said:

"The Missouri Statute is a plain interference with such transportation; an attempted exercise over it of the highest possible power—that of destruction. It meets at the borders of the State a large and common subject of commerce, and prohibits its crossing the State line during two-thirds of each year. * * * * The object and effect of the statute are, therefore, to obstruct interstate commerce, and to discriminate between property of citizens of one State and that of citizens of other States. This Court has heretofore said that interstate transportation of passengers is beyond the reach of a State Legislature. And if, as we have held, State taxation of persons passing from one State to another, or a State tax upon interstate transportation of passengers, is prohibited by the Constitution, because a burden upon it, *a fortiori*, if possible, is a State tax upon the carriage of merchandise from State to State. Transportation is essential to commerce, or rather it is commerce itself; and every obstacle to it, or burden laid upon it by legislative authority, is regulation."

In the *Passenger Cases, 7 How, page, 283,* statutes of the State of New York and Massachussetts imposing taxation upon alien passengers arriving into ports of those States, were declared to be contrary to the Constitution and laws of the United States. All of the members of the Court gave separate opinions in that case and it is diffi-

cult to summarize the opinion of the Court itself. They differed in reasons but not in conclusions.

The same questions in another form are presented to the Court in the *Commissioners of Imigration vs. The Steamboat Lines, 92 U. S., 259.* The purpose of the legislation in that case was to protect the State against the flood of pauperism pouring in from Europe and landing in the State of New York. A complicated system of inspection of all imigrants to see that they were free of disease and infection was formulated by the Legislature of New York. It was attempted to be sustained as within the police power of the State, protecting its good order and its health against pauperism and infectious diseases..

It was argued in that case that as the statute did not come into operation until twenty-four hours after the passenger had landed and had mingled with, or had the right to mingle with, the mass of the population, that he was thereby withdrawn from the influence of any laws which Congress might pass on the subject, and remitted to the laws of the State. But the statute operated upon the ship owner and held him responsible for the passengers for twenty-four hours, just as in the case at bar this injunction seeks to operate upon the Railroad Company transporting the persons who are objected to. The Court said in regard to this that the effective operation of the law commenced at the other end of the voyage. Thus in the case at bar, the complaint shows that the men objected to were about to be imported, which necessarily means that they were about to be brought from another State or a foreign country, and it is at the other end of the voyage that they are interfered with by this injunction, as well as at this end of it, and thereby the interstate or international commerce is directly affected.

The State of California passed a statute which was aimed to exclude the Chinese from that State. It provided, in substance that the Commissioner of Immigration should satisfy himself whether any passengers who arrived in that State from any foreign port were lunatics, idiots, deaf, dumb, blind, crippled or infirm, or who were likely to become paupers, or had been a pauper in any country, or who from sickness or disease would likely become a pauper charge, or likely soon to become such, or a convicted criminal, or a lewd or debauched woman. The Commissioner was authorized to charge 75 cents for every examination of a passenger made by him, which sum he could collect from the master, owner or consignee of the vessel, by attachment. Bonds were to be given with sureties by the parties engaged in this traffic to obey the law, and various

and divers other similar provisions which were intended to enable the State through this statute, to exclude the Chinese; just as it is apparent from the allegations of the complaint in the case at bar, that it was intended to exclude the importation of miners to work in the mines of the defendant Coal Company in place of the striking miners.

A number of Chinese who were held by the Commissioner of Immigration under the operation of this law sued out writs of *habeas corpus* and the cases were decided by Mr. Justice Field while on Circuit, and are reported in the Federal cases as *In re Ah Fong, 1st Fed. cases, page 213.* Same case reported in *3 Sawyer, 144.* Judge Field reviewed the decision and approved the doctrine of the "Passenger Cases," wherein it was held that a State may entirely exclude convicts, lepers, persons afflicted with incurable disease, and may refuse admission of paupers, lunatics and others who, from physical causes, are likely to become a charge on the public, and that it may isolate temporarily the diseased until the danger of contagion is gone. These are held to be in the "Passenger Cases" and by Mr. Justice Field, as within the legitimate police power of a State, and are founded on the sacred law of self-defense.

Judge Fields holds, however, that whatever is outside of the legitimate exercise of this right affects the intercourse of foreigners with our people; their immigration to this country and their residence herein is exclusively within the jurisdiction of the general government, and is not subject to State control or interference; and further, that the power to regulate commerce with foreign nations and to prescribe the conditions of immigration or importation of persons is exclusively a national affair. But he holds further that there exists no right of exclusion in a State since the adoption of the Fourteenth Amendment, and whatever decision may have tended to concede to the States such powers were prior to that amendment and grew out of the condition of slavery. Justice Field takes up the very questions that this bill aimed at. It alleges that the Coal Companies are threatening to import a large number of armed men of the low and lawless type of humanity, and that their importation would be dangerous to the peace, morals and good health of the State and would lead to riot and blood-shed. Judge Field disposes of that matter in this way:

"Where the evil apprehended by the State from the ingress of foreigners, is that such foreigners will disregard the laws of the State and thus be injurious to its peace,

the remedy lies in the more vigorous enforcement of the laws, not in the exclusion of the parties."

And further,

"It is evident that if the possible violation of the laws of the State by an immigrant, or the supposed immorality of his past life or profession, where that immorality has not already resulted in the conviction for a felony, is to determine his right to land and to reside in the State, or to pass through into other and interior States, a door will be opened to all sorts of oppression. The doctrine now asserted by counsel for the commissioner of immigration, if maintained, would certainly be invoked, and at no distant day, when other parties, besides low and despised Chinese women, are the subjects of its application, and would then be seen to be a grievious departure from principal."

After discussing the evils to be apprehended from Chinese immigration, and admitting the grounds of the feeling against it, he says:

"A State cannot exclude them arbitrarily, nor accomplish the same end by attributing to them a possible violation of its municipal laws." And again:

"And the power of exclusion by the State * * * * extends only to convicts, lepers and persons incurably diseased, and to paupers and persons who, from physical causes, are likely to become a public charge."

This case, if followed, would be the end of the case at bar in any forum wherever it is brought, but the first question before you now is the determination of whether or not a Federal question was raised by the complaint. It is seen that a limited power is possessed by the State of exclusion by APPROPRIATE LEGISLATION (none by injunction), while this bill aims to cover that right and also to cover others not enumerated within that right, to-wit, armed men of the low and lawless type of humanity, and hence, a proper construction of the police power of the State and how far the same may extend and not conflict with interstate or international commerce, is the question for determination on the face of the complaint. This question does not rest merely upon a decision of Justice Field, while it alone would doubtless be sufficient, so forcible is his exposition of the principles involved.

The same question was before this Court in the case of *Chy Lung vs. The Commissioner of Immigration*, reported in *92 U. S., page 275.*

Chy Lung was the companion of Ah Fong. who was released by Justice Fields on *habeas corpus.* Chy Lung's

case went to the Supreme Court of California and was carried from it to this court, the opinion was delivered by Mr. Justice Miller. He first reviews the legislation which has been referred to, and says:

"The passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress and not to the States. It has the power to regulate commerce with foreign nations; the responsibility for the character of those regulations, and for the manner of their execution, belongs solely to the national government. If it be otherwise, a single State can, at her pleasure, embroil us in disastrous quarrels with other nations.

"We are not called upon by this statute to decide for or against the right of a State, in the absence of legislation by Congress, to protect herself by necessary and proper laws against paupers and convicted criminals from abroad; nor to lay down the definite limit of such right if it exists. Such a right can only arise from a vital necessity for its exercise, and cannot be carried beyond the scope of that necessity. When a State statute, limited to provisions necessary and appropriate to that object alone, shall, in a proper controversy, come before us, it will be time enough to decide that question."

There is no difference in principle between the exclusion by a State of foreigners and the exclusion by one State of the citizens of another, except that there is an additional clause to the Constitution which would prevent the exclusion of citizens of other States; that is the clause providing that the citizens of one State shall have all the rights, privileges and immunities of another. Upon the general proposition that the same want of power to exclude a foreigner prevents the exclusion of a citizen of another State; see

Bowman vs. Chicago & N.-W. R. R., 125 U. S., 465.
Hannibal & St. J. R. R. vs. Husen, 95 U. S., 465.

In the case of *Hannibal & St. Joe R. R. Co. vs. Husen, supra*, the Court said after referring to the Chy Lung case and the New York Passenger cases:

"These cases, it is true, speak only of laws affecting the entrance of persons into a State; but the constitutional doctrines they maintain are equally applicable to interstate transportation of property. They deny validity to any State legislation professing to be an exercise of police power for protection against evils from abroad, which is beyond the necessity for its exercise wherever it interferes with the rights and powers of the Federal Government."

The court in this same case, *R. R. vs. Husen*, in holding the statute of Missouri invalid, did so notwithstanding the Supreme Court of Illinois had held a similar statute to be valid. The Illinois Court had proceeded upon the ground that the proper inquiry for the regulation of the police powers was for the legislature and not for the Courts. The Court said, through Mr. Justice Strong:

"With this we cannot concur. The police power of a State cannot obstruct foreign commerce or interstate commerce beyond the necessity for its exercise; and under color of it, objects not within its scope cannot be secured at the the expense of the protection afforded by the Federal Constitution. And as its range sometimes comes very near to the field committed by the Constitution to Congress, it is the duty of the Courts to guard vigilantly against any needless intrusion."

A late impression of this Court upon this question the case of *M. K. & T. R. R. Co., vs. Haber, 169 U. S., 613.* This was a consideration of the law of the State of Kansas passed for the prevention of contagious and infectious diseases in cattle and establishing cattle quarantine and sanitary regulations to carry out its object and purpose, which was to prevent the importation of diseased cattle. The court held that this was a proper exercise of the police power of the State. There were many questions passed upon in this case, and among others it was held that this was not a regulation of commerce because this statute only incidentally and indirectly affected such commerce. This case proceeded upon the doctrine that a State may exclude from its limits convicts, paupers, idiots and lunatics and cattle and goods which are dangerous to the property of citizens of the State as having communicable diseases in them. Such legislation is undoubtedly valid if confined to such matters, but the bill in the case at bar does not seek to confine itself to such matters as that, but also seeks to exclude the lowly type of humanity from the borders of the State. If we had a statute in Arkansas containing the words of this complaint and saying that such persons as are therein described shall be excluded, then the question would occur whether that was in the police power of the State, or was it an interference with the interstate commerce clause of the Constitution. We confidently submit that it would be contrary to that clause.

Upon this question of exclusion, the Arkansas Court has considered it incidentally in the case of *Buell vs. State, 45 Ark., 336*, the Attorney General contended for the right of exclusion of a prostitute from the State on account of her

degraded occupation, but the Court, through Mr. Justice Smith, said:

"Possibly the right to live in a given community is a common right of which a person cannot be deprived however degraded or subversive of good morals his occupation may be," and cites authority from the Supreme Court of Texas to the effect that such exclusion cannot be had.

Milliken vs. City Council, 54 Tex., 388, s. c. 38 Am. Rep., 629.

The right of importation of liquors, and right to license or prohibit the sale of intoxicating liquors, were questions fruitful of litigation and engendering much difference of opinion and State legislation. These questions were finally put at rest by the case of *Leisy vs. Hardin, 135 U. S., p. 100*, where the previous decisions are carefully reviewed by Chief Justice Fuller. The doctrine of that case was, in substance, as follows:

That a citizen of a foreign State has a right to import beer into another State and had the right to sell it where imported, but the sale of it must be in its original condition as an imported article. After that condition was changed the State had the right to interfere, by seizure or any other action it saw proper, in prohibition of sale by the foreign non-resident importer, and however deleterious and dangerous to the morals of the State the sale of intoxicating liquors might be, they are the subject of interstate commerce and cannot be controlled by State laws, amounting to regulations, while they retain their interstate character as importations, and said:

"To concede to a State the power to exclude, directly or indirectly, articles so situated, without Congressional permission, is to concede to a majority of the people of a State, represented in the State legislature, the power to regulate commercial intercourse between the States, by determining what shall be its subjects, when that power was distinctly granted to be exercised by the people of the United States, represented in Congress, and its possession by the latter was considered essential to that more perfect union which the Constitution was adopted to create. Undoubtedly there is difficulty in drawing the line between the municipal powers of the one government and the commercial powers of the other, but when that line is determined, in the particular instance, accommodation to it, without serious inconvenience, may readily be found, to use the language of Mr. Justice Johnson in *Gibbons vs. Ogden, 9 Wheat., 1*, 'in a frank and candid co-operation for the general good.'"

Certainly if importation of intoxicating liquors, which were declared by the laws of Iowa to be injurious to the peace, health and morals of that State, could not be prevented by Legislation of that State, when sought to be done by a citizen of another, then, *a fortiori*, the importation of laborers from other States or countries by a citizen of Missouri into the State of Arkansas, can not be prevented by the State of Arkansas however deleterious to its peace, morals and good order the State of Arkansas might regard such importation; for as seen in the citations given and to be given, the transportation of passengers is as much interstate commerce as the transportation of freights.

The decision in *Leisy vs. Hardin* was announced in April, 1890, and shortly thereafter, on August 8, 1890, Congress passed an act conceding to the States police regulations of original packages of liquor to be sold within the State. This act has been passed upon by this Court several times. The ultimate conclusions in regard to the same were announced in *Rhodes vs. State of Iowa, 170 U. S., 412.*

The right to sell original packages free from State interference was held in *Leisy vs. Hardin* to be an essential incident to interstate commerce, but only an incident, as the contract of sale was the act of interstate commerce, and this incident could be delegated to the States by congressional legislation, and said:

"On the other hand, the right to contract for the transportation of merchandise from one State into or across another involved interstate commerce in its fundamental aspect, and imported in its very essence a relation which necessarily must be governed by laws apart from the laws of the several States, since it embraced a contract which must come under the laws of more than one State. The purpose of Congress to submit the incidental power to sell to the dominion of State authority should not without the clearest implication, be held to imply the purpose of subjecting to State laws a contract which in its very object and nature was not susceptible of such regulation, even if the constitutional right to do so existed, as to which no opinion is expressed."

This principle is illustrated by the case of *Bowman vs. Railroad, 125 U. S., 465*, and attention is called to the quotation in that case, which is again approved in the Rhodes case, from *Hall vs. DeCuir, 95 U. S., 485*, in referring to a statute under consideration, the Court said:

"While it purports only to control the carrier when engaged within the State, it must necessarily influence his

conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the State, or taken up within to be carried without, cannot but affect in a greater or less degree those taken up without and brought within, and some times those taken up within and put down without. * * If each State was at liberty to regulate the conduct of carriers, while within its jurisdiction, the confusion likely to follow could not be productive of great inconvenience and unnecessary hardship. Each State could provide for its own passengers and regulate the transportation of its own freight, regardless of the interest of others. Nay, more; it could prescribe rules by which the carrier must be governed within the State, in respect to passengers and property brought from without."

What could be more applicable to the case at bar? These passengers are brought from without the State, and the State seeks to regulate their introduction into the State, because it alleges that their introduction would create a public nuisance and cause bloodshed and disturbance. Necessarily it operates upon the carrier at the point of embarkation of such passengers, and necessarily it interferes with the Coal Company's purpose to import those passengers into the State.

The Act of August 8, 1890, was again before the Court in *Vance vs. Vandercook, 170 U. S., 438.* The Court said:

"But the right of persons in one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States, and does not rest on the grant of the State law. Either the conditions attached by the State law unlawfully restrain the right or they do not. If they do—and we shall hereafter examine this contention—then they are void. If they do not, then there is no lawful ground of complaint on the subject."

The same test may be brought to the case at bar. Either the right of the Coal Company to bring these laborers into the State exists under the Constitution and laws of the United States, or it does not exist; and the determination of whether or not it does exist necessarily brings to an adjudictation in this action a construction of the Constitution and laws of the United States.

Then the Court proceeds to take up and examine the inspection laws under consideration, and to determine whether or not the regulations hampered interstate commerce and said:

"On the face of these regulations, it is clear that they subject the Constitutional right of the non-resident to ship into the State and of the resident in the State to receive for his own use to conditions which are wholly incompatible with and repugnant to the existence of the right which the statute itself acknowledges. The right of the citizen of another State to avail himself of interstate commerce cannot be held to be subject to the issuing of a certificate by an officer of the State of South Carolina, without admitting the power of that officer to control the exercise of the right."

There is no statute of Arkansas which provides for the inspection of passengers brought into the State, or regulations concerning them, but the injunction in this case makes the certificate of an officer of the State of Arkansas a prerequisite to the admission into the State of certain persons. This injunction may be found at pages 3-4 of the Printed Record. It is a notice to the defendants of the action of the court in enjoining them from importing certain people into the Twelfth Judicial Circuit, and orders the clerk to incorporate this order into the summons, and the sheriff of the county is "hereby empowered to do and perform all things lawful to be done, to the end that a strict enforcement of this order shall in all things be had and enforced." The sheriff, as the executive arm of the court, was ordered to prevent the importation into his county of any and all "bodies of armed, lawless or riotous person or persons affected with contagious or infectious diseases that will or might in any way endanger the peace and good order, morals or good health of the State or create a public nuisance in any locality in said county."

As heretofore shown these parties could only be brought to Huntington by bringing them in from the station at Jenson, in the Indian Territory on the State line. It therefore became the duty of the sheriff of Sebastian County to go to the Station of Jenson, and there to inspect all passengers proposed to be carried by the defendent Railroad to the town of Huntington. He was to pass upon their physical condition and ascertain if they had contagious or infectious diseases. This is a well known quarantine regulation, which can, *under appropriate legislation*, be exercised. But in this case there was no legislation for its exercise. But his duty did not stop with an examination of the physical well-

being of the passengers. He was also to investigate and find if they were armed. We presume that this would call for a search of their persons as well as to see whether they carried arms in their hands. He was further to investigate the passengers and find if they were lawless. If they were lawless, he should stop them at Jenson; if they were not lawless, they could go on to Huntington. He was further to find out whether these passengers were riotous; if they were riotous they were to stay at Jenson; if they were not riotous they were to go on to Huntington. But that was not all, he was further to determine whether these parties "will, or might in any way, endanger the peace, good order, morals or good health" of the State, or "create a public nuisance in any locality in said county." If they would endanger the peace, good order, morals or good health of the State they were to stop at Jenson; if they would not, they could go on to Huntington. These were the duties of the sheriff, which were to be strictly enforced at the town of Jenson.

The Court may marvel at the qualifications required of a sheriff under such an injunction.

The case of *Lake Shore & Mich. So. Ry. Co. vs. State of Ohio, 173, U. S., 285*, is an instructive review of the powers of a State to provide for the public convenience and the public good within the limits permitted by the power delegated to Congress of regulating the interstate commerce. This excerpt from the opinion has a direct bearing upon this case:

"The power of the State by appropriate legislation to provide for the public convenience stands upon the same ground precisely as its power by appropriate legislation to protect the public health, the public morals or the public safety.

Whether legislation of either kind is inconsistent with any power granted to the general government is to be determined by the same rules."

All of the rights attempted to be enforced here rest upon an assumed police power of the State to protect the public health, the public morals or the public safety, either or all. Whether such rights are within the power of the State, or whether they trench upon the power granted to the general government by the Constitution, is to be determnined by the same rules, and necessarily, by a proper construction of the extent of the powers of the general government as granted in the Constitution, and the determination of that question, of course is a Federal one, within the meaning of the removal acts.

The last expression which we have found from this court on the attempted regulation by States of passenger traffic which has been held to be an interference with interstate commerce, is the case of *Railroad vs. State of Illinois, 177 U. S., 514*, where the Court held that a statute of Illinois requiring all regular passenger trains to stop at county seats constituted a burden upon interstate commerce in so far as it applied to through trains. The argument was made there, as it is here, that the rights sought to be enforced were only sought to be enforced within the State of Illinois, but the Court met that question by a reiteration of the doctrine of *Hall vs. De Cuir*, heretofore referred to.

III.

THE FOURTEENTH AMENDMENT.

"Nor shall any State deprive any person of life, liberty or property without due process of law."

This may fairly be deduced from the complaint:

That a strike existed among the miners of the defendant Coal Company and that much feeling had been engendered between the striking miners and its employes; that the Coal Company was about to import into its mines a large number of men. Considered in the light of experience in such cases, and the well-known history of strikes, this importation naturally referred to a large number of miners to take the place of the strikers.

While it is not directly alleged in the complaint, it is the fair and the necessary inference to be deduced therefrom.

It is further alleged that such importation would destroy the peace, morals and good health of the community and lead to riot, bloodshed and the dissemination of contagious and infectious diseases. It is apparent that the "dissemination of contagious and infectious diseases" was merely an attempt to incorporate a quarantine right into the complaint; the gist of it is that the importation of these men would lead to riot and bloodshed.

The well known history of strikes show such is the frequent result of the importation of men by the employer to take the place of the striking employes. Therefore, the necessary deductions to be drawn from the complaint are that this Company was about to import men to labor in its mines, and that such importation would cause striking miners, or former employes of said company, and such imported miners, to come into conflict with one another and endanger the peace of the community.

Mr. Justice Peckham delivered two opinions, construing the term "liberty" as used in the Fourteenth Amendment; one, when he spoke for the Court of Appeals of New York in the case of *People vs. Gillson, 109 New York, 389*, and the other, when he spoke for this Court in *Allgeyer vs. State of Louisiana, 165 U. S., 578.*

In the former case he said:

"The term 'liberty' as used in the Constitution is not dwarfed into mere freedom from physical restraint of the person of the citizen as by incarceration, but is deemed to embrace the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. Liberty, in its broad sense, as understood in this country, means the right not only of freedom from servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation."

As defined in the latter case, it is as follows:

"The liberty mentioned in that amendment means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all of his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."

Tested by these rules was the liberty of these "armed men of the low and lawless type of humanity" to work in the mines infringed? Was the liberty of the Coal Company to employ miners in other States, and bring them to their mines to earn a livelihood for themselves and a profit to the Company, impaired? Was the liberty of the Railroad Company to contract for hire to transport from other States to the town of Huntington passengers to take the place of the striking miners burdened by this injunction?

The answer to all of these questions calls for a construction of the Fourteenth Amendment of the Constitution of the United States, and brings into the case a Federal question determining its removal to the Federal Court. The affirmative answer to any of these questions calls for the dissolution of the injunction and for the sustaining of the demurrer to the complaint.

It has repeatedly been held by this Court that a corporation is a person protected by the guarantees of the Fourteenth Amendment.

Smyth vs. Ames, 169 U. S., 466.
Railroad vs. Ellis, 165 U. S., 150.
Railroad vs. Gibbs, 142 U. S., 386.
Santa Clara County vs. Southern Pacific Railroad, 118 U. S., 394.

IV.

THE TEST TO DETERMINE THE PRESENCE OF A FEDERAL QUESTION.

A State is not a party, within the meaning of the Judiciary Act, and a case cannot be removed on account of diversity of citizenship where the State is one of the parties to the action.

Ames vs. Kansas, 111 U. S., 449.
Insurance Co. vs. Wisconsin, 119 U. S., 473.

Although a State is one of the parties, the case can be removed to the Federal Court where a Federal question is involved, cases *supra*. The test to determine the presence of a Federal question is where the complaint shows on its face that some right, privilege or immunity on which the recovery depends will be defeated by one construction of the Constitution or a law of the United States, or sustained by an opposite construction.

Ames vs. Kansas, 111 U. S., 449.
Starin vs. City of New York, 115 U. S., 248.
Insurance Co. vs. Wisconsin, 119 U. S., 473.
So. Pac. R. R. vs. California, 118 U. S., 109.
Shreveport vs. Cole, 129 U. S., 36.

These cases all arose prior to the present Judiciary Act, but in this respect the act of 1887-88 makes no change, and this line of authorities has been expressly approved and adopted in cases arising since the passage of the present Judiciary Act.

New Orleans vs. Benjamin, 153 U. S., 411.

In determining this question the Court looks into the real controversy, irrespective of any suppressions or omissions, etc., in the complaint, and if it is found, by fair intendment to raise a Federal question, it is removable.

State of South Carolina vs. Coosaw Mining Co., 45 Fed. Rep., 804.

The opinion in this case was concurred in by Chief Justice Fuller in *47 Fed., 225*, and the removal sustained in the same case in *144 U. S., 550*.

It is apparent here that the complaint can only be sustained by holding that the rights sought to be enforced are within the police power of the State, and not contrary to any clauses of the Constitution. In other words, that this is a right left with the States and not delegated by them to the general government nor inhibited by the Constitution to be exercised by the States. It is necessary for such construction to be placed upon the Constitution before this complaint can be sustained as within the police power of a State.

V.

AMOUNT IN CONTROVERSY.

Issues of fact raised by the petition for removal must be tried in the Federal Court, and in the Federal Court alone.

Railroad vs. Daughtry, 138 U. S., 298.
Stone vs. South Carolina, 117 U. S., 430.

In injunction suits the value of the object to be attained, or prevented, must govern in determining the amount in controversy.

Railroad vs. Ward, 67 U. S. (2 Black), 485.
Scott vs. McDonald, 165 U. S., 107.
Railroad vs. McConnell, 82 Fed. Rep. 65.

The petition for removal here alleges that the matter in dispute exceeds in amount, exclusive of interest and costs, $2,000.00. That raised a question of fact which could alone could be determined in the Circuit Court of the United States, and not being controverted, must be accepted as true.

Where the complaint is silent as to the amount, the petition for removal must allege the amount to be over $2,000, and when that is done, a question of fact, determinable only in the Federal Court is raised, and such allegation is conclusive in the absence of denial.

The above statement of the rule is deduced from a recent and excellent treatise by Moon on the Removal of Causes, sections 99 and 177. The cases sustaining this proposition are collected in the notes under said sections and fully sustain the text. It would seem idle to pursue this further.

VI.

CAUSES REMOVABLE NOTWITHSTANDING THE COMPLAINT IS DEMURRABLE.

Counsel for appellant alleges, at page 16 of his brief, that the judgment of the Court is illogical in holding that the bill does not state a cause of action, and at the same time states a cause in which the construction of the interstate commerce clause and the Fourteenth Amendment were involved. He argues that it could not assert a right under the Constitution and laws of the United States unless it stated a cause of action. Counsel sees proper to criticize the Court for holding that the cause was removable, and still sustaining a demurrer to the complaint, because it did not state a cause of action.

This Court is open to the same criticism.

In *Railroad vs. McBride, 141 U. S., 127*, the Court said:

"Whether upon those facts the plaintiffs are entitled to recover is not a matter of jurisdiction, but one of the merits of the controversy. Suppose in a State where there is no statute providing for the surviving of such an action a suit is brought by the widow and children of a deceased person alleging that his death was caused by the wrongful act of the defendant, and the defendant having been served with process enters its appearance and denies all liability, and the trial Court improperly holds that there was a liability and renders judgment for damages, is there anything other than a matter of erroneous ruling upon the merits? Could it be held that the Court had no jurisdiction, no right to hear and determine the controversy between the parties? So, here, whether there was or was not a statute in force in the Indian Territory, providing that an action should survive in case of death, and whether upon the facts stated in the complaint the plaintiffs had a cause of action against the defendant, were questions entering into the merits of the controversy, and not matters affecting the jurisdiction of the Court. If it had jurisdiction of the parties, it had the right to inquire and determine whether upon those facts the plaintiffs were entitled to judgment."

Again this Court said in *Schunk vs. Moline & Co., 147 U. S., 500.*

"In short, the fact of a valid defense to a cause of action, although apparent on the face of the petition, does not diminish the amount that is claimed when determining what is the matter in dispute."

Mr. Moon states the rule as follows:

"It is not necessary to make a proceeding in a State Court a suit that the bill, complaint or petition of the plaintiff or complaintant shall state facts sufficient to constitute a cause of action against the defendant. Where a right is asserted to invoke the jurisdiction of the State Court,—the Court having general jurisdictionof the subject matter,—it does not affect the jurisdiction that the damages sought, or other relief prayed, can not be had in that or any other form of action, upon the facts pleaded. Whether there can be a recovery upon the facts stated is a question upon the merits, and not one as to the jurisdiction. Nor does it affect the removability of a suit that there can be no recovery therein."

Moon on the *Removal of Causes, Section 44.*

VI.

THE REAL PARTIES TO THIS SUIT.

This suit is ostensibly the State of Arkansas on the relation of the Prosecuting Attorney of the 12th Judicial District. There is no statute of Arkansas authorizing such suit. There is no proceeding contemplated by the laws of that State for such an action. Such suit is not within the authority conferred on the Prosecuting Attorney of the 12th District.

When a public officer exceeds his authority, and the power conferred upon him by statute, his principal is not bound by his act.

Throop on Public Officers, Section 551.

We take it that this principle is elemental, and if we are correct in that, then this is a suit between the Prosecuting Attorney of the Twelfth Judicial Circuit, who is alleged in the petition to be a resident and a citizen of the Fort Smith Division of the Western District of Arkansas, and the defendant Corporations both created and existing under and by authority of the laws of the State of Missouri, and the case is removable on account of the diversity of citizenship.

VII.

GOVERNMENT BY INJUNCTION.

In speaking of the Police power, this Court, through Mr. Justice Harlan, in the case of *Mugler vs. State of Kansas, 123 U. S., 623,* said:

"Under our Constitution that power is lodged with the Legislative branch of the Government. It falls to that department to exert what are known as the Police Powers of a State, and to determine primarily what measures are appropriate and needful for the protection of the public morals, the public health or the public safety."

In *Prentice on Police Power, p. 31*, he says:

"It falls to the Legislative branch of the Government to determine primarily what measures are appropriate and needful for the protection of the public morals, the public health or the public safety."

We take it that it is an undisputed fact that the Judicial department of the Government can exercise no Police power; it is for that department to pass upon the validity of the Legislature's exercise of that power, and not to create the power.

People vs. Gillson, 109 N. Y., 389.

No statute of Arkansas has been pointed out to you, and none can be, for none exists, authorizing or attempting to authorize any such proceedings as is attempted by this complaint in equity. It is an attempted enforcement of an asserted police power of the State, without any legislative authority behind it, and dependent purely and simply upon judicial creation and judicial enforcement.

Much has been said in political and legal discussion as to "government by injunction," but we respectfully submit that this is government by injunction run mad, without the pretense of statutory authority for this action. Without the State ever attempting to enforce this police power, if it has this police power, a court assumes to act for the State of Arkansas in enforcing a right which it is claimed belongs to the police power of the State, but which has been dormant until called into being by this injunction.

Injunctions enforce equitable rights where the remedy at law is inadequate, and protect the right sought to be enforced in that method. But heretofore an injunction has not attempted to create a right and at the same time enforce that right. Injunctions have not heretofore assumed to exercise the legislative authority of a State. They have merely attempted to enforce pre-existing rights, and not to create rights, especially rights which can only be created by another department of the State government.

It is respectfully submitted that the learned District Judge who determined this case was exactly correct when he held that no amount of proof which might be offered could possibly make a cause of action under this complaint.

JOSEPH M. HILL,
JAMES BRIZZOLARA,
Attorneys for Kansas & Texas Coal Co.

ADIEL SHERWOOD,
Of Counsel.

JAN 14 1902

No. 42.

Petition for Rehearing.

1902

Supreme Court of the United States.

OCTOBER TERM, 1901.

THE [illegible]

THE [illegible] AND
THE [illegible] ROAD
COMPANY [illegible]

APPEAL [illegible] THE COURT OF [illegible]
AND THE [illegible] DISTRICT OF [illegible]

PETITION [illegible]

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 42.

STATE OF ARKANSAS, APPELLANT,

vs.

KANSAS AND TEXAS COAL COMPANY AND THE ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

PETITION FOR REHEARING.

The Kansas and Texas Coal Company respectfully prays the court to set aside its judgment in this cause reversing and remanding the cause, and to grant a rehearing herein for the reasons following, to wit:

First.

Because there are many important questions involved in this case, and the decision of the court herein, it is re-

spectfully submitted, if permitted to stand, will and does overrule a number of cases heretofore decided which have long been considered the law of the court.

Second.

That the court, in preparing its opinion herein and in deciding this case, has overlooked important questions clearly decisive of the case, some of which were not presented by counsel and which are controlling, and any one of which is of itself sufficient to lead to different conclusions from those announced by this court with respect to the right of removal of this cause from the circuit court of Sebastian county, Arkansas, into the circuit court of the United States for the Ft. Smith division of the western district of Arkansas.

Third.

Because the court, it is respectfully submitted, erred in holding that there were no averments in the bill of complaint under which the State of Arkansas could have invoked the original jurisdiction of the circuit court of the United States under section 1 of the act of 1887–1888 for the reason that the bill of complaint upon its face shows that the issue is one between The State of Arkansas, as complainant, and citizens of another State, as defendants; and while it is true that The State of Arkansas, as the party complainant, is not a citizen within the meaning of the removal act, still, under the grant of judicial power in the second clause of article III of the Constitution, Federal courts are given jurisdiction in cases between a State and citizens of another State (and this grant of judicial power continues in-

tact except so far as limited by the provisions of the eleventh amendment), and section 1 of the act of 1887–1888 confers jurisdiction in such cases upon the circuit courts of the United States, and section 2 gives the right to remove such a case into the United States circuit court; so that upon the face of the bill of complaint this case was removable, for that The State of Arkansas was the party complainant and two citizens of another State were defendants, and the case therefore arose under the Constitution of the United States, within the meaning of section 1 of the act (1887–1888), and this by virtue of said grant of judicial power and within the limits thereof and founded thereon.

Fourth.

Because the court holds, in its opinion in this case, that the removability of a case from a State court into the circuit court of the United States is dependent upon whether the bill of complaint or declaration states a cause of action at law or in equity, when, as a matter of fact, this court has time and again held that removability does not depend upon the question whether plaintiff can recover upon and under the cause of action or statement of his claim set forth in his bill of complaint or declaration—in other words, that removability of the cause is one thing and the question whether plaintiff or complainant therein can recover is another and entirely distinct thing—that is to say, one is a question upon the merits of the cause and the other a question of removability; and it is respectfully submitted that the opinion, decision, and judgment of this court in so holding is directly contrary to at least four late decisions of this court, and par-

ticularly the following: St. Louis & San Francisco Railroad Co. *vs.* McBride, 141 U. S., 127; Marshall *vs.* Holmes, 147 U. S., 589; Schunk *vs.* Moline, etc., Co., 147 U. S., 500; Pacific Express Co. *vs.* McDowell, 140 U. S., 692.

Fifth.

It is respectfully submitted that the court erred in holding that the word "import" necessarily meant bringing men (of the class whose transportation over the St. Louis and San Francisco railroad the bill of complaint sought to prevent) into the town of Huntington and county of Sebastian and into the twelfth judicial circuit, but that the word "import" did not necessarily mean bringing men (of the class whose transportation over the St. Louis and San Francisco railroad the bill of complaint sought to prevent) into the State of Arkansas from points outside of the limits of that State, and the fundamental error in this behalf becomes at once apparent, it is respectfully submitted, when we attempt to give a *negative* answer to the following question: Would the defendants be guilty of contempt for violating an injunction issued under the bill of complaint by bringing in from points outside of the State of Arkansas the class of men whose transportation over the St. Louis and San Francisco railroad the bill sought to prevent?

It is impossible to answer this question in the negative, because it would be impossible to prepare an injunction order under the allegations of the bill of complaint in this cause (if kindly disposed in that behalf) which would permit the transportation of men (of the class whose transportation over the line of the St. Louis and San Francisco

railroad the bill sought to prevent) from points in the State of Arkansas to points within the twelfth judicial circuit of Arkansas, which injunction order would not at the same time prevent the transportation over said railroad of men (of the class whose transportation the bill sought to prevent) from points outside of the limits of the State of Arkansas and from such points into the twelfth judicial circuit of Arkansas, unless said injunction order *plainly prohibited* the transportation of such men over said railroad into the twelfth judicial circuit of Arkansas *from points outside of the State of Arkansas* and *expressly permitted* the transportation of such men over said railroad *from points in Arkansas* outside of said judicial circuit *into the limits of said judicial circuit* over the line of said railroad.

Such an injunction order would be in direct conflict with the plain purpose of the bill of complaint and would accomplish nothing but to prevent the transportation of such men over said railroad from points in Arkansas into said judicial circuit *and leave both defendants free to bring in such men over said railroad from points outside of the State of Arkansas.*

So drawn, and this is the only way, it is submitted, such an injunction order could be drawn, the State of Arkansas would thereby object to the transportation of such men from any part of that State into said judicial circuit, and at the same time show its willingness to have the same class of men transported from outside of that State into said judicial circuit (if the bill of complaint upon its face means no more than this court construes it to mean—in other words, if the bill of complaint upon its face seeks only and has no other purpose than to prevent the transportation of such men over said railroad from points in Arkansas to points in

that State within the limits of said judicial circuit); and in reaching these conclusions we draw simple, legal deductions from the allegations of the bill of complaint and need not inspect the injunction order (printed Record, p. 3) which was issued by the State court, at chambers, before the bill of complaint was filed, *which injunction order is no broader than the bill of complaint* and which does *prohibit the transportation* of such men over said railroad into said judicial circuit *from any place inside or outside of the State of Arkansas and for all time to come.*

Sixth.

If it can be said as matter of law that the State of Arkansas was not the real party in interest in this case, then diversity of citizenship appears upon the face of the bill of complaint, because the prosecuting attorney of the twelfth judicial circuit, together with the people of that circuit and the citizens of that portion of Arkansas (assuming the bill of complaint is limited in application to citizens of Arkansas), who desired to be transported over the line of the St. Louis and San Francisco railroad into the twelfth judicial circuit, and whose transportation the bill sought to prevent by injunction in this proceeding, would be the two classes of persons interested in this proceeding as complainants or parties plaintiff, and they are all citizens of Arkansas; on the other side would be two non-residents of the State of Arkansas and citizens of Missouri.

Seventh.

Because the legal effect of the injunction prayed for, even if it were limited in its operation, as suggested by the court in its opinion, to citizens of Arkansas, would still amount to an obstruction to and destruction of interstate commerce, for the reason that no person could be transported north or south of Ft. Smith nor north nor south of Jenson towards or to Huntington, in the county of Sebastian, without being carried out of the State of Arkansas and into the Indian Territory, and then again into the State of Arkansas and out into the Indian Territory again, traveling from the north; and if they came from the south they would have to be transported through the Indian Territory to Jenson, and in alighting from the train would alight in the Indian Territory, and then enter the State of Arkansas after they had crossed the station platform and entered the station-house at Jenson, and thence on to Huntington.

In short, the physical location of the main line of the St. Louis and San Francisco railroad is such that interstate commerce would necessarily (and not incidentally) be affected by granting the injunction prayed for.

The class of men whose transportation was sought to be prevented must have been located outside of the twelfth judicial circuit court, else the State of Arkansas would never seek to enjoin their transportation into the twelfth judicial circuit, and if so located such men could only come into the twelfth judicial circuit from a point north or south of Jenson, over the line of the St. Louis and San Francisco railroad, because there is no part of said railroad located in the county of Scott, and because the main line thereof runs south from

Van Buren, on the Arkansas river, through the city of Ft. Smith, to the town of Jenson, and from thence the Mansfield branch extends to the town of Huntington.

Eighth.

Because, it is respectfully submitted, this court ignores the fact that an injunction granted under the allegations of the bill of complaint would prevent the railroad company from transporting men (of the class whose transportation the bill sought to prevent) through the State of Arkansas from points north or south of Ft. Smith, *whether going to Huntington or not*, because the main line of said railroad runs from north east to southwest through Sebastian county (which is part of the twelfth judicial circuit); and this statement shows that a Federal question appeared upon the face of the bill of complaint, to wit: Can the State of Arkansas or any officer thereof or anybody else (except under authority of an act of Congress) obstruct or destroy commerce between the States?

Ninth.

Section 5, article II, of the Arkansas constitution declares that:

"the citizens of this State shall have the right to keep and bear arms for their common defense."

And the fourteenth amendment makes the citizens of each State citizens of the United States, and declares

"nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Assuming that the State of Arkansas is the real party in interest, how can that State, in view of section 5 of article II of its constitution, and in view of the fourteenth amendment, deny *to certain of its citizens* (also citizens of the United States), assuming the bill of complaint is limited (as stated by this court) in its application and restrictions upon locomotion and traveling upon the line of the St. Louis and San Francisco railroad to citizens of Arkansas, the right to bear arms and the right to travel and contract and act as all other citizens of Arkansas may, freed from all such restraints and restrictions as the bill of complaint seeks to impose upon them?

And do not these Federal questions appear upon the face of the bill of complaint?

Tenth.

It is submitted that the question also arises upon the face of the bill of complaint, and does appear from plaintiff's statement of his own claim (assuming the State of Arkansas to be the real party in interest), whether the State of Arkansas, under the fourteenth amendment, has the right to select the Kansas and Texas Coal Company and the St. Louis and San Francisco Railroad Company from and out of all of the non-resident railroad and coal mining companies doing business in the State and the same part thereof and by a proceeding in equity prevent them by injunction from doing the two things sought to be prevented when all of the other non-resident coal companies are not so prevented, and when all other State or interstate railroad companies and common carriers are not affected or sought to

be affected or prevented from doing the same identical thing.

In other words, the State of Arkansas, being the real party in interest in this proceeding, seeks to prevent the Kansas and Texas Coal Company, a non-resident business corporation, from doing a certain thing which every other business corporation, resident or non-resident, would have the right to do, there being no law which prevents the doing of any such thing.

And every resident or non-resident railroad company doing business as a common carrier and transacting an interstate business as a common carrier would have the right to do the thing which the St. Louis and San Francisco railroad alone would be prevented from doing, solely because of the injunction sought in this proceeding, in the absence of any law which would prohibit any other resident or non-resident railroad company as a common carrier from so doing.

Eleventh.

And it is respectfully submitted that it does appear from plaintiff's statement of its own claim (assuming the State of Arkansas is the real party in interest) that a question arises under the Constitution of the United States, from the allegations of the bill itself, in this, that the question arises whether the State of Arkansas under the fourteenth amendment (which denies to any State the right to deprive "any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws") can secure an injunction against two citizens of another State (in the absence of any State

law declaring its public policy) to prevent the doing of the acts alleged to be threatened, and which the bill of complaint seeks to prevent, when the relief granted would place a burden upon interstate commerce, and would deprive resident and non-resident citizens of their rights, privileges, and immunities under said amendment, and place upon them burdens which are not borne by others under similar circumstances and conditions, and thereby deprive them "of the equal protection of the laws."

Twelfth.

It is submitted that it is important to determine whether the decision announced in this case is in conflict with the decision announced (at this term, on October 23) in Hickman *et al.*, railroad commissioners of Missouri, *vs.* Missouri, Kansas and Texas Railway Company, by Mr. Justice Brewer—that is to say, is the State of Arkansas the real party in interest?

And it is or it is not.

If not the real party in interest, then the people of the twelfth judicial circuit of Arkansas and their prosecuting attorney and the people of Arkansas outside of said judicial circuit living along the line of the St. Louis and San Francisco railroad who desired to be transported over said railroad into said judicial circuit (assuming the bill of complaint upon its face to be limited in its application to citizens of Arkansas, as held by this court), and whose transportation over said railroad the bill of complaint sought to prevent, *would be the real parties in interest as complainants*, and citizens of Arkansas and two citizens of Missouri are de-

fendants; hence diversity of citizenship upon the face of the bill of complaint.

Thirteenth.

Because several Federal questions appear in complainant's statement of its own claim and upon the face of the bill—that is to say, the construction of the interstate commerce clause of the Constitution and the provisions of the fourteenth amendment, unless the court is prepared to hold that all the facts of geography and matters of common knowledge in the western district of Arkansas—open, notorious, and indisputable—and all the boundary lines and subdivisions of said district—in short, all facts of which judicial notice will be taken—are not as much a part of the bill as if set out at length therein, both at common law and by virtue of the statute of Arkansas which declares that "neither presumptions of law nor matters of which judicial notice will be taken need be set forth in any pleading;" and to hold further, that complainant must also allege that his case does arise under the Constitution of the United States notwithstanding the facts alleged show that it does.

Wherefore it is respectfully submitted that this petition for rehearing should be granted and this cause set down for oral argument.

ADIEL SHERWOOD,
With JOSEPH M. HILL AND
JAMES BRIZZOLARA,
Attorneys for Kansas and Texas Coal Company.

CERTIFICATE OF COUNSEL.

I hereby certify that I am solicitor and of counsel for the Kansas and Texas Coal Company in this cause, and that in my opinion the foregoing petition for rehearing of said company is well founded in point of law and proper to be filed in this cause.

ADIEL SHERWOOD,
Solicitor and of Counsel for Kansas and Texas Coal Company.

STATEMENT.

The eastern boundary of the Indian Territory from the southwest corner of Missouri (and the western boundary of Arkansas) is in the shape of a long bow with an outward middle curve towards the east, and that curve towards the east reaches its greatest fullness along the western line of Crawford and Sebastian counties, so that all of the country west of a straight line extended south from the southwest corner of Missouri to the point on the Red river at the southeast corner of the Indian Territory is located in the Indian Territory, and said line runs south, east of the east bank of the Arkansas river, and forms the western boundary line of the city of Ft. Smith and of Sebastian county and of the State of Arkansas.

As a matter of fact, it would be a physical impossibility for the St. Louis and San Francisco railroad to transport men of the class whose transportation the bill sought to prevent from any point along its line in Arkansas to any point

within the limits of the twelfth judicial circuit without transporting them out of the State of Arkansas into the Indian Territory back again into Arkansas and then again into the Indian Territory, because the main line of the St. Louis and San Francisco railroad runs near the eastern line of the Choctaw Nation, Indian Territory, south from Ft. Smith, and enters the Indian Territory at a point just southwest of Ft. Smith, and continues in the Indian Territory several miles, and then, with a sharp turn, said main line of road runs southeast, re-entering the State of Arkansas about thirteen miles south of Ft. Smith, and continues south a short distance in Arkansas and then turns sharply to the southwest, north of the town of Jenson, and runs southwardly into the Indian Territory towards Red river and Texas, so that, as a matter of fact, the main line of said railroad at Jenson is located in the Indian Territory, and the station platform at said station is likewise located in the Indian Territory, and the station-house at said station, which is located about north and south, is located directly on the western line of the State of Arkansas.

No one could be transported over the St. Louis and San Francisco railroad from the north through the city of Ft. Smith to Jenson and from thence to the town of Huntington, in Sebastian county, without becoming an interstate passenger, and, as a matter of fact, would enter the Indian Territory twice before the transportation could be completed, the town of Huntington being located upon a branch of the St. Louis and San Francisco railroad which runs from the town of Jenson, through the town of Huntington, into the town of Mansfield, which is in the south-central

part of Sebastian county, near the Scott County line, and the terminus of the Mansfield branch of said railroad.

There is one station upon the line of the St. Louis and San Francisco railway in the Indian Territory, south of Ft. Smith, called Cedars, located on that portion of the main line of said railroad after it leaves the State of Arkansas and before it again enters said State.

The twelfth judicial circuit was composed of the counties of Sebastian and Scott, both of which are oblong in shape, running north and south, and the western line of both of said counties is the western line of the State of Arkansas, and said two counties for that portion of the State of Arkansas form the eastern boundary of that portion of the Choctaw Nation, Indian Territory. The southern boundary line of Sebastian county is the northern boundary line of Scott county. The northern boundary of Sebastian county is the Arkansas river, and north of the river is Crawford county, and then Washington county, and next Benton county, the northern line of which is the southern boundary of the State of Missouri.

The St. Louis and San Francisco railroad is a great public highway running southwestwardly from the city of St. Louis, through the State of Missouri, to the town of Monett, from which point two lines diverge, one leading towards Kansas, and the other, running southwardly towards Arkansas, enters that State at a point just south of the town of Seligman and just east of the 94th parallel of west longitude. After entering the State of Arkansas the line runs first into Benton county and south through Rogers, the principal town of that county, and next into Washington county and south through Fayetteville,

the principal town of that county, and then south into Crawford county and into Van Buren, the principal town of that county, and here the line crosses the Arkansas river over a great railroad bridge authorized by act of Congress; thence southwardly into Sebastian county and into the city of Ft. Smith and southwardly from thence, as heretofore explained.

The St. Louis and San Francisco railroad from St. Louis to southwest Missouri and into Monett was the immediate successor of the Southwest branch of the Pacific railroad and of the Atlantic and Pacific railroad (acts of Congress, June —, 1866, 1st session, 39th Congress), and said railroad south of Ft. Smith into and through the Indian Territory was constructed under authority of acts of Congress, which required profile maps to be made and filed in the office of the Secretary of the Interior after his approval was endorsed thereon, and said maps were made, approved, and filed, and they show the location of every mile of road in accordance with the surveys and lines made under various acts of Congress (vol. 22, U. S. Statutes at Large, p. 181).

Sections 6170 and 6174 of Sandel and Hill's Digest of Arkansas require railroad companies to file profile maps of their location within each county. The St. Louis and San Francisco railroad, complying with this law, filed its profile maps with the recorder of deeds at Greenwood, Sebastian county.

All of these statements with respect to boundary lines, juxtaposition of boundary lines, etc., are verified by every map of the United States, of Arkansas, of Missouri, and of the Indian Territory, whether prepared by the Secretary of the Interior or not, and by the Government surveys made

by authority of law, by treaties with the Indian tribes, by the laws of Arkansas, by acts of Congress, by common knowledge, by open, notorious, and undisputed existence in the western district of Arkansas, and by the fact that every statement is of a matter of public, as distinguished from private, concern, and particularly by reference to maps 31, 44, and 48 of the Century Atlas, and the laws, treaties, etc., to which the attention of the court will now be called.

THE BOUNDARIES OF THE STATE OF ARKANSAS.

The boundary lines of Arkansas were defined upon its creation as a Territory (United States Statutes at Large, vol. III, act approved March 21, 1819).

The boundaries of Arkansas are also referred to in the act of Congress of June 15, 1836, admitting the State into the Union.

On May 26, 1824, Congress passed an act to fix the western boundary of Arkansas, and on June 23, 1836, a supplemental act with respect to the admission of the State.

The permanent boundary lines of the State of Arkansas are stated in article 1 of the constitution of 1874 of that State, and reference is made to the acts of Congress and the treaties with the Indian tribes existing January 1, 1837.

The retracing of the boundary line between Arkansas and Indian Territory was authorized by act of Congress of March 3, 1875 (19 Statutes at Large, p. 356), and this survey so authorized was made by Reddick McKee, and cost $11,880. (See The Public Domain, p. 179.)

TREATIES FIXING THE BOUNDARY LINE BETWEEN ARKANSAS AND INDIAN TERRITORY.

In the treaty proclaimed May 28, 1826, between the Cherokee Nation and the United States (Revision of Indian Treaties, p. 57) it is provided in section 3 that the United States is to have a survey made, and in article 1 of said treaty the western boundary of Arkansas was defined as follows, to wit:

"A line shall be run commencing on Red river, at the point where the eastern Choctaw line strikes said river, and run due north with said line to the river Arkansas, thence in a direct line to the southwest corner of Missouri."

In the treaty proclaimed April 12, 1834, between the United States and the Cherokee Nation (Revision of Indian Treaties, p. 61), it is provided in article 1 that the boundary between Arkansas and the Indian Territory shall be drawn as therein described, and this description speaks of the point "on the Arkansas where the Choctaw boundary strikes said river;" and this boundary is again referred to in the treaty between the United States and the Cherokee Nation proclaimed December 31, 1835 (Revision of Indian Treaties, p. 65), and the location of the eastern Choctaw boundary is referred to in article 2 of said treaty as the treaty of April 12, 1834.

In the treaty proclaimed June 2, 1855, between the United States and the Choctaws and the Chickasaws (Revision of Indian Treaties, p. 274) the permanent boundary line between the State of Arkansas and the Choctaw and Chickasaw Nations is provided in article 1, and this boundary line running north

and south begins at a point one hundred (100) paces east of old Ft. Smith, where the western boundary line of Arkansas crosses the Arkansas river, and thence due south to Red river, and article 19 of this same treaty binds the United States, as soon as practicable, to cause the eastern and western boundary lines, described in article 1 of that treaty, to be run and permanently marked. The initial point in the survey provided for, and also in the Reddick McKee survey, authorized by a later act of Congress (19 Statutes at Large, p. 356), was and is located at the corner of the vacant quartermaster's store upon the United States reservation at Ft. Smith, and about two-thirds of the stone marking this permanent boundary is in the Choctaw Nation and the remainder is in the State of Arkansas.

It will be remembered that Ft. Smith was first located as a United States military post and reservation, and the limits of old Ft. Smith referred to in the treaty above mentioned are the limits of the old military reservation.

The national cemetery at Ft. Smith is located in Sebastian county, all except the southern fifteen feet, which is in the Indian Territory, and the St. Louis and San Francisco railroad runs into the Indian Territory at a point southwest of Ft. Smith and not much more than one hundred yards from the south wall of the national cemetery.

Article 1 of the treaty of June 2, 1855, sometimes called the treaty of Washington, defining the boundary line, is the following:

"Beginning at a point on the Arkansas river one hundred paces east of old Ft. Smith, where the western boundary line of the State of Arkansas crosses said river, and running thence due south to Red river; thence up Red river to

the point where the meridian of 100° west longitude crosses the same; thence north along said meridian to the Canadian river; thence down said river to its junction with the Arkansas river; thence down said river to the place of beginning."

And under the provisions of article 6 of the treaty of July 10, 1866 (Revision of Indian Treaties, page 285; l. c., 288), it is provided that Congress may grant a right of way to railroad companies through the Indian Territory, and the same provision is made in article 18; and article 19 of the treaty of Washington (l. c., 280) provides that the United States shall, as soon as practicable, cause the eastern and western boundary lines of the Territory to be run and permanently marked.

The boundary line between Arkansas and the Indian Territory was resurveyed and the boundaries fixed afterwards, under the provisions of the act of Congress of 1875, chapter 140 (see 18 Statutes at Large, p. 476; also p. 357, 19 Statutes at Large), commencing at the same initial point.

The St. Louis and San Francisco railroad was constructed south of Ft. Smith, through the Choctaw Nation, under authority conferred by act of Congress and in accordance with the provisions of article 6 of the treaty proclaimed July 10, 1866, between the United States and the Choctaw and Chickasaw Indians (Revision of Indian Treaties, p. 285).

The surveys required by acts of Congress in Arkansas and the Indian Territory were made and the boundaries marked as required by the laws of Arkansas and said acts and in accordance with the statute with respect to the sur-

veys of public lands (sections 2395, etc., chapter 9, Revised Statutes of the United States, 2d ed., 1878, p. 438).

In chapter 333, section 6, page 671, vol. I, 2d ed., 1874–1891, Suppl. to the Revised Statutes of the United States (25 Stat. L., 783), it is provided:

"That all that part of the United States which is bounded on the north by the State of Kansas, on the east by the States of Arkansas and Missouri, on the south by the State of Texas, and on the west and north by the Territory of Oklahoma, as defined in the first section of this act, shall be known as the Indian Territory."

BOUNDARY LINES OF SEBASTIAN COUNTY AND CITY OF FT. SMITH.

The boundary lines of Sebastian county were fixed and determined by an act of the legislature approved January 6, 1851 (Acts of Arkansas, 1851, p. 81).

Under the provisions of an act of Arkansas (Laws 1842, p. 147), which is the first public act with respect to the incorporation of the city of Ft. Smith (formerly in Crawford county), certain trustees were appointed to fix the metes and bounds of the town and have the same surveyed and platted. Said plats were to be recorded in the office of the recorder of deeds of the county, and all this was done.

The Arkansas river is the northwest boundary in part of the city of Ft. Smith, and owing to a sharp turn in the river and the curve of the eastern Choctaw boundary line "at the point on the Arkansas where the Choctaw boundary strikes said river," the eastern Choctaw boundary line is some distance from the east bank of the Arkansas, and this eastern Choctaw line is the western line and boundary *at*

the same time of the State of Arkansas, the twelfth judicial circuit, the county of Sebastian, and of the city limits of Ft. Smith.

BOUNDARIES OF TWELFTH JUDICIAL CIRCUIT.

These were fixed by an act of Arkansas approved March 8, 1889 (Laws, 1889, p. —).

The old military reservation at Ft. Smith is referred to in an act of Congress approved March 16, 1886, which is chapter 20 of the United States Statutes at Large, volume 24, page 4, 1885–1887, and said act provides that a jail shall be built on the site of the old Federal building, and in the same act an appropriation is made for a new Federal building wherein the United States courts are held at Ft. Smith.

The western district of Arkansas was organized by an act of Congress dated January 31, 1877, which was amended by a later act of Congress, dated February 6, 1889.

Congress has repeatedly recognized the juxtaposition of the city of Ft. Smith and the Indian Territory, and particularly in this way. In an act approved February 26, 1889, chapter 280, 25 United States Statutes at Large, page 745, Congress granted a right of way to the Ft. Smith, Paris and Dardanelle railway, "beginning at the said city of Fort Smith; thence running to the Arkansas river either in the State of Arkansas or the Indian Territory, and crossing said river either in the said State or Territory, and thence through said Territory or through said State and Territory," etc.

In an act approved June 18, 1888, volume 25, United

States Statutes at Large, page 184, Congress authorized the Ft. Smith Bridge Company to construct a bridge across Poteau river, "at or near Fort Smith."

In an act approved May 30, 1888, volume 25, United States Statutes at Large, page 162, Congress granted a right of way through the Indian Territory to the Ft. Smith and El Paso railway, "to begin at a point at or near the city of Fort Smith on the western boundary of Arkansas."

In an act approved August 2, 1882, volume 22, United States Statutes at Large, page 181, Congress granted a right of way through the Choctaw and Chickasaw Nations, from which the following quotations are made:

SECTION ONE. "Said right of way to commence at any point to be selected by said company on the line of the Choctaw Nation, immediately contiguous to Sebastian or Scott counties in the State of Arkansas, and run thence in a southwesterly direction on the most direct and practicable route through the lands of the said Choctaw and Chickasaw Nations in the direction of Paris in the State of Texas."

Section 7 of said act requires the railroad company to bill freight "from points on its line in the Indian Territory to Chicago, with the privilege of stop-over at St. Louis the same as if billed to St. Louis in the first instance."

Section 5 of this act requires the "grant to be accepted within ninety days after the passage thereof and within thirty days after that time the railroad company is required to fix and determine the general route of its line of road through the Indian Territory by filing with the Secretary of the Interior a map of preliminary survey and definite location within one year next thereafter," and in section 10

of the act it is provided that the grant will become void if said map be not filed.

Section 3 of this act gives jurisdiction to the United States circuit court for the western district of Arkansas in all suits of any kind or character brought by the members of the Indian tribes against the railroad company on account of the failure to settle right of way disputes.

And section 5 of the act provides that said line of railroad shall be completed within one year after the passage of the same.

Congress by an act approved February 17, 1883, volume 22, United States Statutes at Large, page 419, chapter 47, entitled "An act granting a right of way for railroad purposes and telegraph lines through the lands of the United States included in the Fort Smith military reservation at Fort Smith, in the State of Arkansas," gave said railroad company the right to locate its main line through said reservation, "beginning at the initial point on the boundary line between the State of Arkansas and the Choctaw Nation."

It is further provided that the piece of ground given the railroad company for right of way in said act shall commence at the southern boundary of section 17, township 8 north and range 32 west of the fifth principal meridian, and 588 feet west of the rock on said southern boundary of section 17 which marks the southeast corner of said United States reservation.

And said act also speaks of "a point on the northern boundary of ground reserved for a national cemetery, 96 & $\frac{3}{10}$ feet distant from the intersection of said northern

boundary with the boundary line between the State of Arkansas and the Choctaw Nation."

In other words, the right of way granted to the St. Louis and San Francisco Railway Company runs north and south through said United States military reservations and in a portion of the Choctaw Nation, Indian Territory.

It is further provided in said act that said right of way of the railway shall cross Garrison avenue (which is the principal street east and west in Ft. Smith) near the southwestern boundary thereof, where said avenue intersects the northeastern boundary of the reservation.

It is further provided in said act that new stone walls shall be built by the railroad company for the old fort, and "provided that from where the right of way of said railway company enters and extends through the walls, enclosing the old fort, said railway company shall erect and build a stone wall on the extreme line of the inside boundary of their right of way of like height and dimensions as the wall now enclosing the fort, so that the fort after the construction of the road shall be completely enclosed."

By an act approved July 3, 1882, chapter 266, volume 22, United States Statutes at Large, page 144, Congress passed an act entitled "An act to authorize the construction of a bridge over the Arkansas river at the town of Van Buren, Crawford county, Arkansas," and this right of way granted to the St. Louis and San Francisco railway, and in section 2 it is provided that said bridge shall be a lawful structure and post-route for mail, etc., and in section 5 it is provided that plans, details, etc., must be submitted to the Secretary of War. The Reddick McKee survey was made under the provisions of chapter 140, volume 18, United States Statutes

at Large, page 476, which act was approved March 3, 1875, and entitled "An act to establish the boundary line between the State of Arkansas and the Indian country."

It is provided in section 1 of this act that "the boundary line between the State of Arkansas and the Indian country, as originally surveyed and marked and upon which the lines of the survey of the public lands in the State of Arkansas were closed, be, and the same is hereby, declared to be the permanent boundary line between the said State of Arkansas and the Indian country," and in section 2 that "the Secretary of Interior shall, as soon as practicable, cause the boundary line, as fixed in the foregoing section to be retraced and marked in a distinct and permanent manner," etc.

By the act of June 1, 1886, volume 24, United States Statutes at Large, page 76, Congress extended the time for completion of the St. Louis and San Francisco railway through the Indian Territory for two years next thereafter.

Congress appropriated the money for making the survey last referred to by an act passed in 1887, which will be found in volume 19, United States Statutes at Large, page 356, and the same statement will be found set forth in "The Public Domain," page 179.

BILL OF COMPLAINT.

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY FOR THE GREENWOOD DISTRICT.

THE STATE OF ARKANSAS, *Plaintiff*,
vs.
KANSAS AND TEXAS COAL COMPANY and SAINT LOUIS AND SAN FRANCISCO RAILROAD COMPANY, *Defendants*.

Complaint in Equity.

1. The plaintiff, The State of Arkansas, on the relation of Jo. Johnson, prosecuting attorney for the 12th judicial circuit, for her cause of action alleges:

2. That defendant Saint Louis and San Francisco Railroad Company is a corporation organized under the laws of the State of Missouri, owning and operating a railroad in the 12th judicial circuit of Arkansas, and more particularly in Sebastian county, of said circuit.

3. That defendant Kansas and Texas Coal Company is a corporation duly organized under the laws of the State of Missouri, owning and operating a coal mine at Huntington, in the Greenwood district of Sebastian county.

4. That a high state of excitement and condition of hot blood now prevails between striking miners and their sympathizers, in large numbers, on the one side, and said coal company and its employés, on the other.

5. That said coal company is threatening and is about to import into said county and town of Huntington, over the line of their codefendant's railroad, a large number of armed men of the low and lawless type of humanity, to wit, about two hundred, to the great danger of the public peace, morals, and good health of said county, and more particularly of said town.

6. That said threatened action on the part of said defendant, if permitted to be executed, would become a great public nuisance and would destroy the peace, morals, and good health of said county and town; would lead to riot, bloodshed, and to dissemination of contagious and infectious diseases.

7. That said county and town of Huntington are now enjoying peace, health, and good order, and your relator believes that the loss of human life and untold expense to the tax-payers of said county on account of probable violation of the criminal laws can and should be prevented by the power of the law.

8. Wherefore your relator prays:

1st. That the defendant Kansas and Texas Coal Company, its agents, servants, and employés, and each of them, be restrained and prohibited from importing or causing to be imported or brought into Sebastian county or the twelfth judicial circuit of Arkansas, and that the St. Louis and San Francisco Railroad Company, its agents, servants, and employés, each, both, and all of them, be enjoined, re-

strained, and prohibited from importing, hauling, or bringing, or causing to be imported, hauled, or brought, in the said county or circuit, and from unloading or attempting to unload from any of its cars in said county or circuit any and all large bodies of armed, lawless, or riotous persons or persons affected with contagious or infectious diseases that might endanger the peace, good order, or good health of the State or create a public nuisance in said county or circuit, under the pains and penalty of the law;

2d. That a temporary restraining order be issued; and that,

3d. Upon final hearing said restraining order be made perpetual, and that the State have and recover her costs.

Jo. Johnson,
Prosecuting Attorney.

ARGUMENT.

It is respectfully submitted that certain propositions must be conceded without discussion :

1st.

That the legislative department must " determine primarily what measures are appropriate and needful for the protection of the public morals, the public health, or the public safety."

Prentice on Police Power, p. 31.

Mugler *vs.* Kansas, 123 U. S., 661 ; l. c., 666.

2d.

That the judicial department can exercise no police power, and can act only in passing upon the validity of the legislature's exercise of that power, and cannot create that power.

People *vs.* Gillson, 109 N. Y., 389.

3d.

That State " regulations of subjects of police power must not themselves be the regulation of commerce."

Gibbons *vs.* Ogden, 9 Wheat., 1.

Hannibal & St. Joseph R. R. Co. *vs.* Husen, 95 U. S., 469; l. c., 470, 471.

Hall *vs.* De Cuir, 95 U. S., 485; l. c., 488, 490.

Bowman *vs.* R. R. Co., 125 U. S., 465.

Chy Lung *vs.* Freeman *et al.*, 92 U. S., 275.

And traffic is interstate commerce when it is carried out of one State and through a portion of another State or Territory and back into the first State again.

State *vs.* R. R. Co., 40 Minn., 267.

New Orleans Cotton Exchange *vs.* N. O. & T. R'y Co., 2 Int. Com. Rep., 519.

Lord *vs.* Steamship Co., 102 U. S., 541.

Commerce Clause Federal Constitution (Prentice & Eagan), 88, 89, 90.

In Lord *vs.* Steamship Co., 12 Otto, 541, it is said:

"Never since the decision in the case of Gibbons *vs.* Ogden, 19 Wheat., 1, has there been any doubt about the proposition that a State can have no control over commerce between that State and other nations or States or the Indian tribes;" and, further, that "the contracts sued on in the present case were in effect to carry goods from San Francisco to San Diego via Pacific Ocean. They could not be performed except by going, not only out of the State of California, but out of the United States as well."

It is respectfully submitted the removability of this cause into the circuit court can be determined upon the face of the bill in either of two ways, or, third, can be determined under the allegations of the bill in connection with or without facts of which judicial notice may be taken (and which as a matter of law are just as much a part of the bill as if alleged therein), that is to say:

First.

If the State of Arkansas be the real party in interest, we have a State as complainant and two non-resident citizens as defendants, and thus a case arising under the Constitution of the United States founded thereon and authorized thereby (2d clause, article III), and one in which the jurisdiction of the circuit court could have been invoked under the first section of the act of 1887, 1888.

Texas & Pacific Railway Co. *vs.* Cox, 145 U. S., 593.

Second.

If the State of Arkansas be not the real party in interest, then we have as party plaintiff the people of the twelfth judicial circuit, represented by their prosecuting attorney, and as defendants two non-resident citizens, and thus upon the face of the bill diversity of citizenship.

Third.

The allegations of the bill show an attempt to enjoin the transportation of certain men into the twelfth judicial circuit over the St. Louis and San Francisco railroad with or without facts, of which judicial notice may, it is submitted, be properly taken, added thereto, show an attempt to obstruct and destroy interstate commerce (and it is immaterial whether this is attempted by the State of Arkansas or a portion of the people thereof), and an attempt also to encroach upon rights guaranteed by the fourteenth amendment (if the State of Arkansas be the real party in interest).

Wherefore it should be determined, 1st, whether the

State is the real party in interest; and, 2d, the proper limitations of the doctrine of judicial notice; and, 3d, whether with or without the application of that doctrine an obstruction of destruction of interstate commerce is shown by the allegations of the bill, and also, if the State of Arkansas be the real party in interest, whether the allegations of the bill show an attempted denial of rights guaranteed by the fourteenth amendment.

First.

Is the State of Arkansas the real party in interest?

The State of Arkansas sued in this behalf at the relation of the prosecuting attorney on the twelfth judicial circuit, and the two defendants are non-residents of Aakansas and citizens of Missouri, and therefore we have a case wherein the State on one side is complainant and two non-resident citizens are defendants. In other words, we have a case arising under the Constitution and laws of the United States authorized thereby and founded thereon, to wit, upon the second clause of article III (the grant of judicial power) of the Constitution of the United States.

It may be said that the State of Arkansas is not the real party in interest in this case, and that under the rulings of this court in Hickman *et al. vs.* McK. & T. R'y Co. (decided at the present term on October 23), that the State of Arkansas was not the real party in interest and did not prosecute or defend any right as an artificial person, and had simply a governmental interest in the litigation.

If this position be true and as a matter of law be correct, then we have a diversity of citizenship shown upon the face

of the bill—that is to say, we have citizens of the twelfth judicial circuit of Arkansas on the one side and two non-residents of Arkansas, to wit, citizens of Missouri, on the other side.

If the State of Arkansas has merely a governmental interest in this proceeding, and if, as stated in the *Reagan case* and in the *Hickman case*, "its results will not inure to the benefit of the State as a State in any degree," then the State of Arkansas is not the real party in interest.

It will be remembered that the rule is clearly and squarely announced in the case of Missouri, Kansas & Texas *vs.* Hickman *et al.*, by Mr. Justice Brewer, in the following words:

"But applying the same principles of construction to the removal of the case and to cases in which it is claimed that the State, though not the nominal, is in fact the real, party plaintiff, it may be fairly held that the State is the real party when the relief sought is that which inures to it alone, and in its favor the judgment or decree, if for the plaintiff, will effectively operate."

It is indisputable that the State of Arkansas is the real party in interest or it is not.

If the State of Arkansas be the real party in interest in this proceeding—in other words, if the relief sought is that which inures to the State of Arkansas alone, and in its favor the judgment or decree, if for said State, will effectively operate—then the State of Arkansas is the real party in interest under the rulings of this court; otherwise it is not.

If not the real party in interest, and if the State of Arkansas in this proceeding had simply a governmental interest—that is to say, an interest in the welfare of all of its

citizens—and the prosecuting attorney of the twelfth judicial circuit had the right to represent them by filing a petition in equity to enjoin the doing of certain things in the absence of any law forbidding those certain things to be done, then there is clearly a diversity of citizenship shown upon the face of the bill of complaint, because citizens of the twelfth judicial circuit are, as a matter of law, complainants, and two non-residents are defendants.

It will hardly be denied that the courts of Arkansas have no power, in the absence of legislation, to prevent the entrance of any person into the limits of Arkansas, and the police power cannot be exercised except in pursuance of legislation. In other words, there must be some law or ordinance of the State which prescribes certain rules and regulations before the courts are at liberty to act.

This being true, and the court taking judicial notice of the fact that the State of Arkansas had not passed any law authorizing the filing of such a bill of complaint, the question does arise upon the face of the bill of complaint whether complainant had the right to maintain such a proceeding when it would interfere with and was an attempted regulation of interstate commerce, because the proposition is announced clearly in Gibbons *vs.* Ogden that, "within the meaning of the commerce clause of the Federal Constitution, State regulations must be limited to the subjects of the police control *and must not themselves be the regulation of commerce.*"

In other words, if the State of Arkansas had enacted a law which forbade the doing of the things sought to be accomplished by this bill of complaint, the question would at once have been presented whether such a law was valid under

the Constitution of the United States, and certainly if this proposition be sound, then the question arises under the Constitution of the United States whether a proceeding of this kind, which seeks to accomplish an obstruction of interstate commerce, does not present a Federal question, whether the State appears by itself to enforce any supposed right under the police power or right of quarantine, or whether it appears by some prosecuting attorney or other agency asserting the right in the name of the State to exercise such a power.

In this view, in other words, the proceeding before the court is an attempt, pure and simple, through and by a prosecuting officer of the twelfth judicial circuit, composed of the counties of Sebastian and Scott, to enforce in equity by injunction some supposed right under the police power which belongs exclusively to the legislative department and in the absence of any statute declaring public policy or a public nuisance in that behalf, and this court in this case declares that the State of Arkansas is not asserting any right under the Constitution or laws of the United States and put toward no ground of relief derived from either—that is to say, that the State as a State was not prosecuting or defending any right as an artificial person—*i. e.*, as a State—and the ordinary deduction from this statement must be this, that the prosecuting attorney, in endeavoring to enforce some supposed right under the police power in a court of equity (independent of any legislation upon the subject in the territory over which it exercises jurisdiction), and that such a court could under the police power enforce rights as prayed for which would inure to the benefit of only a portion of the people of the State, to wit, those living within the limits of the twelfth judicial circuit.

Further assuming the allegations of the bill of complaint to be true, certainly upon the face of the bill the question arises whether the State of Arkansas or a portion of the people of said State had the right to do a thing which its prosecuting attorney for one of its judicial circuits alleges it has the right to do, and whether a proceeding to prevent the doing of all these things by these two defendants, if prevented, will not deprive them of rights, privileges, and immunities under the Constitution of the United States.

And certainly under the allegations of the bill and under the Constitution and laws of the United States the question (assuming that the State is the real party in interest) arises whether the State as such is prosecuting or defending a right as an artificial person in this proceeding; and, if so, whether the State has the right to obstruct and impede a common carrier in the performance of its public duty in carrying interstate traffic and obstruct and impede the transaction of its public business when that carrier is operating one of the great public highways of the country and transacting both State and interstate business; and the question also arises whether under the provisions of the fourteenth amendment the State as such had the right to prevent citizens of Arkansas, assuming that the bill could be properly limited in its operations to citizens of Arkansas, from traveling and the railroad company from transporting them through the State of Arkansas (and through the twelfth judicial circuit) and points north and south thereof—that is to say, into and out of the Indian Territory and into and out of the State of Missouri.

Second.

Judicial notice—the doctrine of, exemplified by the authorities—and its proper limitations:

As applied to pleadings:

The common-rule law of pleading was that facts need not be stated of which the court will take judicial notice.

Coke on Litt., 303 B.

And this rule is enlarged in Arkansas by section 5062, Mansfield's Digest, 1884 (section 5071, Sandel & Hill Digest, 1894), which provides that—

"Neither presumptions of law nor matters of which judicial notice is taken need be stated in any pleading."

And the same provision is made with respect to indictments in section 2118, Mansfield's Digest.

The rule is stated this way in Bliss on Code Pleading (3d ed.), section 137:

"The things of which the court will take judicial notice are, first, public laws, *or matters evidenced by public law which all are presumed to know;* second: *matters of such notoriety* including the commonly recognized facts of science as are supposed to be generally known; third: matters of mixed law and notoriety; and, fourth: *matters peculiarly within the knowledge of the particular court.*"

In short, everything of which judicial notice is taken is as much a part of the pleading and of the facts before the court "as if it had been set up and proof were plenary."

Brown *et al. vs.* Piper, 1 Otto (91 U. S.), 200; l. c., 201.

No proof is necessary in support of a motion where the facts are judicially known by the judge before whom the motion is pending.

Secrist *vs.* Petty, 109 Ill., 188.

It is not necessary that matters of which the court should take judicial notice be alleged in a pleading, and upon demurrer the pleading is to be read as if such matters were stated therein at length.

Walsh *vs.* Trustees of New York and Brooklyn Bridge, 96 N. Y., 477.

State *ex rel.* Campbell *vs.* St. Louis Ct. of App., 97 Mo., 276.

In the Walsh case, *supra*, it is held that public statutes should be read as if embodied in the complaint, and in the Campbell case, *supra*, it is held that a pleading need not set out the sections of the Constitution nor refer to them by numbers in order to raise a constitutional question.

As applied to both matters of pleading and evidence:

Arkansas decisions:

Judicial notice is taken of the fact that lager beer is malt and fermented liquor as a matter of common knowledge,

Waller *vs.* State, 38 Ark., 656;

That whiskey is an intoxicating liquor,

Edgar *vs.* State, 37 Ark., 219;

Of what is a turf race,

McLain *vs.* Huffman, 30 Ark., 428;

Of the occupation of certain territory in rebellion by the United States forces,

Rice *vs.* Shook *et al.*, 27 Ark., 137;

Of the period during which courts were closed by the war,

Hanks *vs.* Harris, 29 Ark., 323;

Of the existence of a municipal corporation and its rights to contract,

Alderman *vs.* Finley, 10 Ark., 423;

Municipal charters and the amendments thereto will be judicially noticed,

Bevins *vs.* Baxton, 23 Ark., 387;

That the town of Richmond is in Little River county, though formerly in Sevier,

Wilder *vs.* State, 29 Ark., 293;

That bank paper was the common medium of exchange in Arkansas in March, 1840,

Dillard *vs.* Evans, 4 Ark., 175;

Of the corporate existence of the Real Estate Bank of Arkansas,

McKiel *vs.* Real Estate Bank, 4 Ark., 592;

And of all matters connected with its organization, history, and dissolution,

Davis *et al.*, Adm'rs, *vs.* Hunt, 37 Ark., 594;

Of the seasons and of the course of agriculture,

Tomlinson *vs.* Greenfield, 31 Ark., 557;

That in September, 1866, the civil State government of Arkansas was provisional; commanders of the United States military forces had authority to arrest and imprison,

Belding *vs.* State, 25 Ark., 315;

With respect to the usages of trade and of "the general custom and usage of merchants as well as of the general customs of our own country as to things generally known,"

Davis *vs.* Hanley, 12 Ark., 645;

Of the day of the week a certain day of the month came on,

Robinson *vs.* State, 38 Ark., 548.

Dillard *vs.* Evans, 4 Ark., 175; suit on a note dated March 17, 1840, payable "in common currency of Arkansas:"

Held: "At that period bank paper constituted the common medium of exchange * * * and this court is bound judicially to take notice of the kind of circulating medium that was then in general use in the State. * * * The term 'common currency in Arkansas,' at the date of the bond sued on, meant bank notes or paper issues, which were then the general and universal currency of the State."

McKiel *vs.* The Real Estate Bank, 4 Ark., 592; debt on two notes; plea, usury and *nil debet:*

Held: "The bank, being a public corporation, was not required to be proved, as the court was bound judicially to take notice of it."

Conway *et al. ex parte*, 4 Ark., 302; l. c., 367:

Held: "The Real Estate Bank is a public corporation, and we are bound judicially to know the condition of her

liabilities and assets, for these are to be found in the general history of the country and in the reports of the legislature and her own sworn officers. The laws of commerce and the usages of trade, and the character of the exchanges as the circulating medium of the country, are always received as judicial evidence, and all contracts in reference to them must be construed and determined according to the existing state of things under which such agreements were executed."

Davis & Co. *vs.* Hanley, 12 Ark., 645; suit against drawers of a bill. The indorsers received notice of protest about middle of the forenoon on Monday. The first mail thereafter for the residence of the drawers departed Tuesday at 7 a. m. The notice to the drawers was deposited in the post-office on Tuesday after the departure of the 7 a. m. mail.

Held: " * * * it is clear that the diligence was sufficient to fix the drawers of the bill in question; because the evidence shows that the mail departed at the early hour of 7 a. m., which, even at that season of the year, was at least some two hours before the commencement of the ordinary proper mercantile hours of business for that day, as we know as 'a part of the general custom and usages of merchants' as 'well as of the general custom of our own country,' knew as a matter that is 'generally known.'"

"It is insisted that the proof fails to show that the offense (manslaughter) was committed in Pope county. This was not proved in those words, but there was testimony that it occurred at a point three miles southwest of Dover * * * The general situation of Dover, which was for years the seat of justice for the county, with reference to the county lines, was a matter of public notoriety, of which the court had notice without proof. That the county line could not

be reached within three miles was common knowledge; and if the jury found, as it might have done, on the evidence, that the homicide occurred within three miles of Dover that fixed it in Pope county."

Forehand *vs.* State, 53 Ark. 46 (13 S. W.).

THE GENERAL RULE.

"Three classes of facts naturally follow as many divisions of the rule, of which there can be no question, that courts will take judicial notice: *first*, matters of public law, which all are bound to know; *second*, matters so notorious as to be regarded as universally known; and, *third*, matters peculiarly within the cognizance of the particular court."

28 Am. Law Reg., 194.

"In fine, courts will generally take notice of whatever ought to be generally known within the limits of their jurisdiction."

Greenl. Ev., vol. 1, sec. 6.

In Swinnerton *vs.* Columbia Ins. Co., 37 N. Y., 174, Hunt, J., said:

"In fine, courts will generally take notice of whatever ought to be generally known within the limits of their jurisdiction, and where the memory of the judge is at fault, he may refer to such documents of reference as may be at hand, and he may deem worthy of confidence."

"A court sitting in a particular city is bound to know the general scenery of such city, and its division into streets and wards; the courts of a particular State to know the boundaries of the State and its divisions into towns and counties, and the limits of such divisions, and of its judicial districts; the positions of leading cities and villages in such State, and the natural boundaries of the State."

1 Whart. Ev., sec. 339.

PARTICULAR BOUNDARY LINES ARE NOTICED, THEIR RELATION TO EACH OTHER, JUXTAPOSITION OF STATES, COUNTIES, AND CITIES, AND THE LOCATION OF EACH WITH RESPECT TO THE OTHER, AND DISTANCES FROM THE PLACE WHERE THE COURT SITS, COURSE OF RIVERS WITHIN THE JURISDICTION AND GENERALLY, NAVIGABILITY, ETC.—IN FACT, ALL MATTERS OF PUBLIC CONCERN AND INTEREST WHICH ARE OPEN, NOTORIOUS, AND INDISPUTABLE, WHICH IS THE DETERMINING FACTOR, INCLUDING THE LOCATION OF LANDS DESCRIBED BY GOVERNMENT SUBDIVISION, SECTION, TOWNSHIP, AND RANGE, TOWNSHIP AND SECTION LINES, AND ALL OTHER MATTERS OF PUBLIC CONCERN AND INTEREST WHICH ARE PART OF THE EXPERIENCE AND COMMON KNOWLEDGE OF THE DAY ARE LEGITIMATE GROUNDS FOR THE JUDGMENT OF THE COURT.

In K. C., Ft. S. & G. R. R. Co. *vs.* Burge, 40 Kan., 736, judicial notice was taken *of the boundaries of Bourbon county, of the location of Ft. Scott in said county, and of the fact that a place two miles distant from Ft. Scott was in Bourbon county.* (Mr. Justice Brewer was then on the bench.)

Judicial notice will be taken of the constitution of the streets, squares, and public grounds of Boston in determining the proper construction of the statute as to authorizing an entry upon a public garden in building a subway.

Prince *vs.* Crocker, 166 Mass., 347.

"Taking judicial notice of the facts aforesaid, it is not difficult to ascertain that Moniteau county, where the crime is proved to have been committed, is one of the interior counties of this State. Nor, under the principle of the au-

thorities cited, will it exceed the limits of the license accorded to judicial notice, to be aware of the fact that California is the county-seat of Moniteau county, and if we may be aware of this, inasmuch as we know where the boundaries of Moniteau county are, we easily can ascertain that three miles west of California will not reach the western boundary of that county."

State *vs.* Pennington, 124 Mo., 388; l. c., 392.

VIOLATION OF CRIMINAL STATUTE AGAINST FISHING WITHIN LIMITS OF COUNTY.

The court took judicial notice of the fact that Wood island and Flag island were within the limits of Cumberland county.

State *vs.* Thompson, 85 Me., 189.

"The court takes notice of the civil divisions of the State; and we know there is a town called Batavia in the county of Genessee. We know also that there is no town of that name in the county of New York where the venue is laid."

Chapman *vs.* Wilder, 6 Hill, 475.

Courts take judicial notice of the towns in the State and that they are located in certain counties.

Vanderwerker *vs.* People, 5 Wend., 530.

Held by judicial supreme court of Massachusetts: "We think that the superior court might take judicial notice that the Connecticut river, above the dam at Holyoke, does not either by itself or by uniting with other waters, constitute a public highway over which commerce may be carried on with other States or with foreign countries * * * It is well known that the waters of the Connecticut river, at

the place where it is alleged that the defendant's steamboat was employed, can be used by vessels only for the transportation of persons and property between different places in Massachusetts. They are, therefore, waters not within the maritime jurisdiction of the United States."

Commonwealth *vs.* King, 22 N. E. (Mass.), 905.

In City Council of Montgomery *vs.* Montgomery and Wetumka Plank Road Co., 31 Ala., 76, it was judicially noticed that no part of the Tallapoosa river ran within the corporate limits of the city of Montgomery.

"I think we may take judicial notice that there is a lake on the island of Trinidad known as the Asphaltum lake, and assume that when in the specifications they used the words 'the best quality of refined lake asphaltum,' they meant asphalt from the Asphaltum lake in the Island of Trinidad."

Conde *vs.* City of Schenectady, 29 App. Div. (N. Y.), 607, 608.

Counterclaim for damages happening to goods in transit from Liverpool to New Orleans, the court said:

"It is well known, however, and it has been judicially recognized as a geographical fact that the River Mersey is filled with salt water and that the tide ebbs and flows to a very great height.

"If these goods came down the River Mersey (to Liverpool) it is more than probable that they were damaged in their transportation to Liverpool," etc.

Whitney & Co. *vs.* Gauche, 11 La. Ann., 432.

"The courts take judicial notice of such streams (Mississippi and its navigable tributaries) as they form a part of the geography of the country, and their navigability is known, as

forming a part of the common public history. For instance, we take judicial notice that the Ohio river, forming the southern boundary of the State, and the Wabash, for some distance above its confluence with the Ohio, are navigable for vessels freighted with commerce, and that they are used as commercial highways in the trade and commerce between different States."

Neaderhouser *vs.* The State, 28 Ind., 257, 267.

"This is not controlled, nor indeed could it well be, for we judicially know that this island (Rock island) is within the jurisdiction of the State of Illinois, and forms a part of its territory for judicial and all other purposes."

Gilbert *vs.* Manufacturing Co., 19 Ia., 319.

"The courts will take notice that the State of Missouri is east of the Rocky mountains. * * * In the case of the U. S. *vs.* La Vengeance (3 Dall. 297) the court judicially noticed the geographical position of Sandy Hook; and it may certainly take notice judicially of like notorious facts, as that the bay of New York, for instance, is within the ebb and flow of the tide."

Price *vs.* Page *et al.*, 24 Mo., 65.

"Kansas City and Wichita are large and universally known commercial centers in this country; the court will take judicial notice of their geographical location, and that transportation by railroad from these places is over lines outside the State of New York."

Parks *vs.* Jacob Dole Packing Co., 6 Misc. (N. Y.), 570.

Suit *vs.* Acceptor of Bill of Exchange:

Held: "It must be intended that the 'city of New York,' as expressed in the bill, is our great commercial emporium—a point at which quite half the revenue of the

nation is collected from duties on imposts—a place recognized by *almost numberless acts of Congress, both public* and private. This independently of the history (statistical and general) of the country, forces on us a knowledge of the geography of New York, and that it is *extraterritorium.*"

Dickinson *vs.* The Branch Bank at Mobile, 12 Ala., 54.

In Wood *vs.* Fowler, 26 Kans., 682, the court took judicial notice of the fact that the Kansas river was a navigable stream, and the opinion was delivered by Mr. Justice Brewer.

In State of Wisconsin *vs.* Cunningham, 15 L. R. A., 561, it is held that the court would take judicial notice of the location, general boundaries, and juxtaposition of the several counties, towns, and wards mentioned in the public statutes.

In Denny *et al. vs.* State of Indiana, 31 L. R. A., 727, l. c. 733, it is held that judicial notice will be taken of the location, boundaries, and juxtaposition of the several counties in the State.

In Olive *et al. vs.* Alabama, 4 L. R. A., 33, it is held that the court will take judicial notice of the fact that the whole of a certain river is within the State and above the ebb and flow of tides, and of the fact that the bed of the river was included within the surveys of the country.

We know judicially that the Indian Territory is beyond the jurisdiction of Texas,

Swafford *vs.* State, 3 Tex. App., 76;

Conner *vs.* State, 23 Tex. App., 378 (5 S. W., 189);

Of the boundaries of a county and of the location of lands described by government subdivision, as by township, range,

and section, and of the legal subdivisions thereof, and if the description of such subdivision shows the land to be in the county this is sufficient,

Campbell *vs.* West, 86 Cal., 200 (24 Pac. Rep., 1000);
Wilcox *vs.* Moudey, 82 Ind., 219;

The court being required to take judicial notice of the provisions of the city charter will notice the fact that a prior ordinance must have been passed under said city charter before the ordinance could have been enacted, and that a petition alleging passage of the second ordinance is good for that reason against a general demurrer,

City of St. Louis *vs.* Lang *et al.*, 131 Mo., 412;

Acts of Congress authorizing the survey and subdivision of public lands,

Priezer *vs.* Ex. Ins. Co., 6 Wis., 89;
Atwater *vs.* Schenck, 9 Wis., 160;
Sempler *vs.* Hager, 27 Cal., 163;
Papin *vs.* Ryan, 32 Mo., 21;
Dickenson *vs.* Breeden, 30 Ill., 279;

Nisi prius courts will take judicial notice of the incorporation of a city within a county and its ordinances,

Solomon *vs.* Hughes, 24 Kas., 211;

The location of the falls in the Ohio river will be judicially noticed, and also the fact that pilots were not appointed for any other falls in the State,

Cash *vs.* Auditor, 7 Ind., 227;

Also the divisions of land into sections and the directions from one quarter post to another,

Mossman *vs.* Dorrest, 27 Ind., 233;

The boundary lines of counties are noticed and also to determine what towns are included therein and to ascertain their area,

Ham *vs.* Ham, 39 Me., 363;
State *vs.* Jackson, 39 Me., 291;
Board of Comm'rs *vs.* Skitter, 13 Ind., 235;
Indianapolis, etc., R'y Co. *vs.* ——, 16 Ind., 43;
Salyer *vs.* Romanet, 52 Tex., 562;
Hoffman *vs.* State, 12 Tex. App., 406;
State *vs.* Reader, 50 Va., 527;

And that books known as plat books are and have been for many years kept by the county recorder in which plats of towns, cities, and additions are recorded,

Miller *vs.* Indianapolis, etc., 123 Ind., 196;

What streams in the State, if any, are tidal streams,

Worker *vs.* Allen, 72 Ala., 456;

Of the geography of the State and the enumeration of the inhabitants thereof taken as required by law,

Parker *vs.* State (Ind.), 32 N. E. Rep., 836;

And the length of time ordinarily required therefor,

People *vs.* Rice, 135 N. Y., 473;

And without averment and proof of the fact and within the State will know to what county they belong,

Indianapolis, etc., R'y Co. *vs.* Case, 15 Ind., 42;
Martin *vs.* Martin, 51 Me., 366;
Hite *vs.* State, 9 Yerg. (Tenn.), 381;
Vanderworker *vs.* People, 5 Wend., 530;
Harding *vs.* Strong, 42 Ill., 148;

"Transactions and objects which necessarily connect themselves with, and form a part of the general history or geography of the country ought to be taken notice of."

Payne *vs.* Treadwell, 16 Cal., 231;

Courts will judicially recognize the public surveys and legal subdivisions of the public land,

Atwater *vs.* Shenck, 9 Wis., 160;
Hill *vs.* Bacon, 43 Ill., 477;
Mossman *vs.* Forrest, 27 Ind., 233;
Wright *vs.* Phillips, 2 Green (Iowa), 191;

That portions of a public road between two points are within a certain county,

Indianapolis, etc., R'y Co. *vs.* Case, 15 Ind., 2;
Indianapolis, etc., R'y Co. *vs.* Paramore, 12 Ind., 406;

The relative situations of a city and a river,

City Council, etc., *vs.* Montgomery, etc., Co., 31 Ala., 76;
Winnipiseogee Lake Co. *vs.* Young, 40 N. H., 42;

Of the fact that a particular river did not through its entire range lie in one State,

Cummings *vs.* State, 13 Mich., 70;

The navigability of large streams,

Wood *vs.* Fowler, 26 Kas., 682 (40 Am. Rep., 330);
Neaderhouser *vs.* State, 28 Ind., 257;

Where certain streets in the city of San Francisco were designated upon an official map of the city, was held that the court was not only bound to take judicial notice thereof where marked on the diagram filed in the case, but also of the relations of such streets with each other and the directions in which they run,

Brady *vs.* Page, 59 Cal., 52;

The English courts announce the same rules; thus, that the colony of Victoria is beyond seas,

Cooke *vs.* Wilson, 2 Jur. (N. S.), 1094 (1 C. B. N. S., 153);

And also that a certain place lies east or west of Greenwich,

Curtis *vs.* March, 4 Jur. (N. S.), 1112;

As part of experience and common knowledge of the day, courts will take judicial notice that certain provinces are in a foreign country, and that they have governments and courts proceeding according to the usual course of the common law,

Lazier *vs.* Wescott, 26 N. Y., 146;
Cooke *vs.* Wilson, 37 Eng. Law & Eq., 361;

Also the location of the principal rivers of the State, what sections they traverse, and what towns or cities they lie in,

City Council *vs.* Montgomery *vs.* M. & W. Plank Road Co., 31 Ala., 79;

The tendency of the courts is to extend as to the scope of judicial knowledge so as to keep proper pace with the rapid advances of art, science, and general knowledge, "but there is a prudent limitation put upon this principle, so as to confine it to matters of a general and public nature, or such as do not concern individuals or local communities. The facts must be of such age or duration as to have been established as a part of the common knowledge of well-informed persons at least,"

Wiggins Ferry Co. *vs.* C. & A. R'y Co., 5 Mo., 347;

In an action against a street railroad company for damages to property, it was held that the court would take judicial notice of the fact that extreme ill-will existed against the defendant which but a few weeks had culminated in mob violence,

Geist *vs.* Detroit City, 91 Mich., 446;

It is not necessary in order for the court to exercise its function of judicial notice that the facts in question should have been formally recorded in any written book, written history, or book of science,

Salomon *vs.* ——, 28 Ala., 83;

Austin *vs.* State, 101 Tenn., 563;

The courts have no right to be ignorant of current phrases which everybody else understands, and should take judicial notice thereof, and this was held in an action for libel,

Bailey *vs.* Kalamazoo Publishing Co., 40 Mich., 251;

The Indiana supreme court, as a part of the history of that State, takes judicial notice that Clark's grant was sur-

veyed and located adjacent to the falls of the Ohio river, in the counties of Clark, Floyd, and Scott, and also that the town of Clarksville was located and laid out abutting the Ohio river within said grant, in the counties of Clark and Floyd,

Carr *vs.* McCampbell, 61 Ind., 97;

As a part of the things generally known, courts will notice the nature and utility of telephones,

Wolfe *vs.* Missouri Pac. R'y, 97 Mo., 473;
Globe Printing Co. *vs.* Stahl, 23 Mo. App., 451;

And of the benefit of art of photography as a proper means of producing correct likenesses of persons and objects,

Luke *vs.* Calhoun Co., 52 Ala., 115;
Udderzook *vs.* Com., 76 Pa. St., 340;

Boundaries of the United States will be judicially noticed by the courts of Texas, certainly so far as they coincide with the boundaries of the State,

Ogden *vs.* Lund, 11 Tex., 688;

Courts will judicially notice the precise boundaries of local subdivisions,

Boston *vs.* State, 5 Tex. App., 383 (32 Am. Rep., 575);
Edwards *vs.* Davis, 3 Tex., 321;

Of State boundaries,

Gilbert *vs.* Water Power Co., 19 Ia., 319;
State *vs.* Pennington, 124 Mo., 388;
Thomas *vs.* Stigers, 5 Pa. St., 480 (39 Pa. St., 486).

In the last case it was held that the courts of Pennsylvania would judicially notice the agreement between Lord Baltimore and William Penn relative to the boundary line between Maryland and Pennsylvania.

The corporate existence and names of the several counties within the State,

Lyell *vs.* Lapeer County, 6 McLean (U. S.), 446;
Trammell *vs.* Chambers County, 93 Ala., 388;

The geographical position of the county,

Bond *vs.* Perkins, 4 Heiskel (Tenn.), 364;

The courts of the State will judicially notice the area of established counties and their boundaries,

Jackson *vs.* State, 147 Ind., 476;
Smith *vs.* Flournoy, 47 Ala., 345;
Steinmetz *vs.* Versailles Turn P. Co., 57 Ind., 457;
Terre Haute, &c., R'y Co. *vs.* Pearce, 95 Ind., 496;

Where the limits of a town appear by its act of incorporation they will be judicially noticed by the courts of the State,

Martin *vs.* Martin, 51 Me., 366;

Judicial notice will be taken of the governmental surveys and subdivisions of lands thereunder,

Webb *vs.* Mullins, 78 Ala., 111;
Bittle *vs.* Stewart, 34 Ia., 224;
Sever *vs.* Lyons, 170 Ill., 395;
Richardson *vs.* Hedges, 150 Ind., 53;
Stodard *vs.* Sloan, 65 Ia., 680;
Baxter *vs.* Causton, 41 Mich., 448;

The relative situation of subdivisions of a county will be judicially noticed,

Prieger *vs.* Ex. Mut. Ins. Co., 6 Wis., 89;
Buchanan *vs.* Whitham, 36 Ind., 257;

Courts will also judicially notice township and section lines,

Keile *vs.* Yellow Head, 80 Ill., 208;

Courts will also notice the area of the Government quarter section of land,

Quinn *vs.* Windmueller, 67 Cal., 461;
Meacham *vs.* Sunderland, 10 Ill. App., 123;

The court will take judicial notice that the Miller County tract is located between the Illinois and Mississippi rivers, and that all of it is west of the fourth principal meridian,

McNutt *vs.* Turner, 16 Wall., 352;

The courts will take judicial notice that the limits of a city are coextensive with the limits of the county,

Reg *vs.* St. Maurice, 16 Q. B., 908 (71 E. C. L., 908; 20 L. J. M. C., 221, 15 Jur., 559);

The court knows judicially that there is a town in the county of Wilkinson named Woodfield and there is but one,

Morgan *vs.* State, 64 Miss., 511;

and that the court will notice in what county said town is located,

State *vs.* Reader, 60 Ia., 527;

Courts will take judicial notice that St. Louis and Chicago are great marts of trade for stock,

White *vs.* Mo. Pac. R'y Co., 19 Mo. App., 400;

Courts will judicially notice all old and well-known streets of a city and that they are public highways,

State *vs.* Ruth, 14 Mo. App., 226;

Whittaker *vs.* 8th Ave. R'y Co., 5 Robt. (N. Y.), 650;

Courts will take judicial notice of the county in which a public highway is located where the lands affected by it are described by certain townships and ranges,

Adams *vs.* Huntington, 114 Ins., 66;

Where a stone wall is erected within three feet eight inches of a window judicial notice will be taken that it will diminish the passage of light and air,

Ware *vs.* Chew, 43 N. J. Eq., 493;

Of county boundaries and the location of lands described by Government subdivision as by township, section, and range and the legal subdivision thereof,

Campbell *vs.* West, 86 Cal., 197;

That a street is in a certain part of the city,

Walsh *vs.* Mo. Pac. R'y Co., 102 Mo., 589;

Of the relative distances from a certain place to another part of the same State and the neighboring States,

Jamison *vs.* Ind. Natural Gas Co., 128 Ind., 555;

That certain rivers are public highways,

Com. *vs.* Cunningham, 150 Mass., 221;

Of the location and relative situation of lands officially surveyed and mapped out under the authority of acts of Congress,

Knabe *vs.* Burden, 88 Ala., 436;
Peck *vs.* Sims, 120 Ind., 345;

That in Wisconsin the capacity of many navigable streams has been increased for lumbering purposes by a system of dams,

Tewksbury *vs.* Schulenburg, 41 Wis., 584;

Of the distance between well-known cities of the United States and of the usual rate of speed of railway trains between them,

Pearce *vs.* Langfit, 101 Pa. St., 507 (47 Am. Rep., 737);
Manning *vs.* Gasharie, 27 Ind., 399;
Fitzpatrick *vs.* Pappa, 89 Ind., 17;

That at a certain time the region of Pike's Peak was within the Territory of Kansas,

Carey *vs.* Reeves, 46 Kas., 571;

That certain lands are located within the Indian Reservation,

French *vs.* Lancaster, 3 Dak., 346;

That a particular legal subdivision of a section of land in the State is not a fractional subdivision,

Peck *vs.* Sims, 120 Ind., 345;

Surveys of public lines made under public statute are proper subjects of judicial notice,

Wright *vs.* Phillips, 2 Greene, Iowa, 191;
Atwater *vs.* Schenck, 9 Wis., 160;
Dickinson *vs.* Breeden, 30 Ill., 279;

That there can be no such description in a Government survey as the southeast side of a quarter section,

Buchanan *vs.* Whitman, 36 Ind., 257;

And of the areas of counties within the State and the boundary lines of such counties,

Board of Commissioners *vs.* Spitler, 13 Ind., 235;
Hamm *vs.* Hamm, 39 Me., 263;

And of the division of each section into forty-acre tracts,

Prigger *vs.* Exchange Ins. Co., 6 Wis., 89;
Atwater *vs.* Schenck, 9 Wis., 160;
Hale *vs.* Bacon, 43 Ill., 477.

In Oppenheim *vs.* Wolf *et al.*, 3 Sandf. Ch., 571, it is held that facts which are part of the experience and common knowledge of the day are legitimate grounds for the judgment of the court. This principle is applied to the usual duration of voyages across the Atlantic by steam and other packet ships.

In Hunter *vs.* New York, Ontario & Western R'y Co., 6 L. R. A., 246, it is held that judicial notice may be taken of the height of the human body and the measurements of its several parts.

If the State court is required to notice local or private laws, the Federal court in that State must do so,

Beaty *vs.* Knoer, 4 Pet., 152;
Renaud *vs.* Abbott, 116 U. S., 277.

In Owings *vs.* Hull, 9 Pet., 624, it is said by Mr. Justice Story that the Federal courts generally will notice State constitutions and laws the same way that they notice the acts of Congress.

Judicial notice will be taken of the existence of quasi-public corporations, such as a railroad corporation,

13 Ct. of Cl., 117;
Baltimore, etc., R. R. Co. *vs.* Sherman, 30 Gratt. (Va.), 602;

That at a certain time a certain section of the country was unsettled,

U. S. *vs.* Wallamant *vs.* C. M. Co., 42 Fed. Rep., 351;

Of the rules of navigation,

The "Scotia," 14 Wall., 170 (20 L. ed., 822);

Of the distance between cities in different States,

Mutual Benefit Life Ins. Co. *vs.* Robinson, 58 Fed. Rep., 723;

The courts are bound to take judicial notice of public facts and geographical positions,

The "Apollon," 9 Wheat., 362; l. c., 374;

(This case was cited and approved in Peyroux *vs.* How., 7 Pet., 342 (8 L. ed.), 707.)

Of the boundaries of different States,

Thorson *vs.* Peterson, 9 Fed. Rep., 517;

Federal courts will take judicial notice that the lands surrounding Seattle harbor had for years been selected and known as the site of a city, and are hence exempt from settlement under the homestead and exemption laws,

Ex parte Peterson, 57 Fed. Rep., 883.

In Taylor *vs.* Barclay, 2 Sim., 213, a pleading alleged that a certain government was recognized by His Majesty's government, and the court treated this allegation as incorrect, because it took judicial notice of the fact that the statement made was not true; and upon the same principle in

People *vs.* Water Front Co. (Cal.), 50 Pac. Rep., 305,

the court sustained a demurrer to a declaration which alleged title, which the court knew, as a matter of judicial knowledge, did not exist. Upon the same principle—

In State *vs.* Lingle, 128 U. S., 528, it is held that matters of which the court takes judicial notice may be referred to by counsel in argument.

In United States *vs.* La Vengeance, 3 Dall., 297; l. c., 301, it is held that this court will take judicial notice of the fact that the town of Sandy Hook is located upon the water.

In Brumagin *vs.* Bradshaw, 3 Cal., 40, the court following this case took judicial notice of the fact that Potrero in the year 1850 was separated from the city of San Francisco and that it is now a part of said city.

This case was also cited as authority in

Hipes *vs.* Cochran, 13 Ind., 177,

where the court took judicial notice of the facilities of travel to determine the time necessary to travel between two certain points.

In Peyroux *vs.* Howard, 7 Pet., 324 (8 L. ed., 700), the court held that it was "authorized judicially to notice the situation of New Orleans for the purpose of determining whether the tide ebbs and flows as high up the river as that place."

This case was cited in Lands *vs.* Cargo, &c., 4 Fed., 480, where the court took judicial notice of the fact that waters upon which a contract was performed were navigable, and in *Ex parte* Lane, 6 Fed. Rep., 37, where judicial notice was taken that the Dominion of Canada is a British possession, and in Forehand *vs.* State, 53 Ark., 48 (13 S. W. Rep., 728), where it is held the court, as a matter of common knowledge, will take judicial notice of the fact that the county line is more than three miles from a certain town, and in State *vs.* Wagner, 61 Me.. 186, where the indictment was held sufficient which alleged that a murder committed in a certain place (commonly known) was located in a certain county, and in Crary *vs.* Port Arthur and C. & D. Co. (Tex.), 47 S. W. Rep., 940, the court took judicial notice that the tide ebbs and flows in Sabine pass.

In Peyroux *vs.* Howard, 7 Pet., 324, the jurisdiction of the court depended upon the fact whether or not the tide ebbed and flowed as high up the Mississippi river as New Orleans. The court said:

"But we think we are authorized judicially to notice the situation of New Orleans, for the purpose of determining whether or not the tide ebbs and flows as high up the river as that place. * * *

"It cannot certainly be laid down as a universal, or even as a general proposition, that the court can judicially notice matters of fact. Yet it cannot be doubted that there are many facts, particularly with respect to geographical positions, of such public notoriety, and the knowledge of which is to be derived from other sources than parol proof; which the court may judicially notice. Thus in the case of the U. S. *vs.* La Vengeance, 3 Dall., 297, the court judicially noticed the geographical position of Sandy Hook. And it may certainly take notice judicially of like notorious facts, as that the bay of New York, for instance, is within the ebb and flow of the tide."

The same ruling is made in Parks *vs.* Hunt, 7 Pet., 343.

In Gibbons *vs.* Ogden, 9 Wheat., 1; l. c., 220, the court took judicial notice of the fact that "in our western waters their (steamboats) principal employment is the transportation of merchandise, and all know that in the waters of the Atlantic they are freqently so employed."

Judicial notice will be taken of the events constituting the history of the country, as well as of transactions and objects intimately connected therewith, and in this connection as to the admission of States into the Union,

Wright *vs.* Hollingsworth, 1 Pet. (U. S.), 165;

Courts will take judicial notice of their State's territorial extent as well as its civil and political division,

United States *vs.* Jackson, 104 U. S., 41;

Thorson *vs.* Peterson, 9 Fed. Rep., 517;

United States *vs.* Johnson, 2 Sawy., 482;

The Federal courts will take judicial notice of the boundary lines between States,

Coffee *vs.* Groorer, 123 U. S., 11;

Judicial notice will be taken of the fact that taxable property is not assessed at its full value, but only at a per cent. of its actual value,

Railroad, &c., *vs.* B'd Equalization, 85 Fed. Rep., 302.

In Mutual Benefit Life Ins. Co. *vs.* Robinson, 58 Fed. Rep. (C. C. A.), 723; l. c., 723, it is held:

"That the United States circuit court had the right to take judicial notice of the fact that Dubuque, Iowa, was more than one hundred miles from Asheville, N. C., the place where certain depositions were taken. This was held on motion to suppress depositions because there was no evidence before the court that the witness was not more than one hundred miles from the place of trial at Dubuque."

Following the same line of reasoning, it was said, in an important case:

"I am at liberty to take judicial cognizance of the fact that a very large interstate trade exists in fresh-dressed meats. I am at liberty to take cognizance also of geographical distances, and of the fact that the Virginia statute, in imposing a charge of one cent per pound on all fresh meats offered for sale at one hundred miles or more from the place of slaughter, imposes this charge on all meats brought from other States of the Union; and, as to those cities of Virginia having fifteen thousand inhabitants, imposes it upon meats brought from all or nearly all that portion of Virginia lying west of the Blue Ridge mountains."

An act was held void because violative of interstate-commerce clause of Constitution which was developed by an inspection of the act *in connection with facts judicially known*,

In re Rebman, 41 Fed., 867;

In this connection, it has been held that an American court may take judicial notice of the fact that the water in the River Mersey, in England, is salt, and that the tide ebbs and flows therein to a great height,

Whitney *vs.* Gausche, 11 L. A. Ann., 432;
Metzger *vs.* Post, 44 N. J. Law, 77;
Wood *vs.* Fowler, 26 Kans., 687 (40 Am. Rep., 330);

The courts will take judicial notice of the fact that a place lies east or west from Greenwich, and consequently has a time different from that of Greenwich,

Curtis *vs.* March, 4 Jur. (N. S.), 1112;

In taking judicial notice of prominent geographical facts and features of the country, the court will take judicial notice of the geographical position of islands,

State *vs.* Wagner, 61 Me., 178;

The Federal courts will take judicial notice of the fact that a railroad company is authorized by an act of Congress to build and maintain a bridge over navigable water,

Pa. R'y Co. *vs.* Baltimore, etc., R'y Co., 37 Fed. Rep., 129.

In Lyon *vs.* Marine Collector of Customs, 55 Fed. Rep. (C. C. A.), 964; l. c., 966, a certain fact with respect to shipping is held to be one of which judicial notice will be taken as of common knowledge taught by all text-books upon the subject and also all facts of general history.

It is held by Mr. Justice Gray, in Jones *vs.* United States, 137 U. S., 202, that:

"All courts of justice are bound to take judicial notice of the territorial extent of the jurisdiction exercised by the government whose laws they administer or its recognition or denial of the sovereign power as appearing from public acts of the legislature not formally put in evidence nor in accordance with the pleadings."

And the court took judicial notice that the island of Navassa, in the Caribbean sea, was, at the time a murder thereon was committed, under the sole and exclusive jurisdiction of the United States.

The last case was cited as authority for the action of the court in taking judicial notice of an international boundary line which included a portion of Behring sea and generally the limits of the boundaries so fixed,

United States *vs.* James G. Swan, 50 Fed. Rep., 108; l. c., 111;

That the Indian Territory is a grazing country where cattle in large numbers run at large,

G. C. & S. F. R'y Co. *vs.* Washington, 49 Fed. Rep., 447 (4 U. S. App., 421);

Of new processes of utility in facilitating trade,

Richards *vs.* Mich. Cent. R'y Co., 40 Fed. Rep., 165.

In Phillips *et al.*, Ex'rs, *vs.* City of Detroit, 111 U. S., 604 (28 L. ed., 532), the court held, in passing upon the validity of an alleged improvement, the court will take judicial notice of matters of common knowledge and of things in common use to determine whether the invention under consideration is patentable.

In Ohio Life Ins. Co. *vs.* Debolt, 16 How., 416; l. c., 435 (14 L. ed., 997), it is held that judicial notice will be taken of the fact as a matter of public history that almost every bill for incorporation is drawn by the incorporators.

In United States *vs.* Teschmaker, 22 How., 392; l. c., 405 (16 L. ed., 353), it is held that, though not offered in evidence, this court will take judicial notice of the facts shown with respect to public lands in the papers composing the Mexican archives showing the departmental assembly records, and this court will consult the same.

This same proposition was announced by this court in Caha *vs.* United States, 152 U. S., 222, where it was held that judicial notice will be taken of the regulations of a department of the Government; and also in Kirby *vs.* Lewis, 39 Fed. Rep., 77, where it is held that the court can consult official reports relating to swamp lands, though not formally offered in evidence.

In Davidson *vs.* Gibson, 56 Fed. Rep., 443; l. c., 446, where it is said the court, in making up its opinion of the law of the case, is not limited in its researches to legal literature; it may consult works on science, or art, or history touching the topic on trial, and may appeal to public archives for this purpose.

(Citing—

Wharton Ev., secs. 282, 336;

Brown *vs.* Piper, 91 U. S., 42;

U. S. *vs.* Teschmaker, 22 How., 392;

Kirby *vs.* Lewis, 39 Fed. Rep., 66;

Eureka Vinegar Co. *vs.* Gazette Print Co., 35 Fed. Rep., 570);

and the court accordingly held that it had the right to consult public laws of the Creek Nation.

Courts will judicially notice the fact that American corporations have been in the habit of openly making contracts in England,

Bank of Augusta *vs.* Earl, 13 Pet.; 590.

"Hoppers with chutes beneath them have been used for a dozen different purposes, but principally for grain elevators, by means of which vessels lying alongside a wharf are loaded in a fraction of time required by hand or animal power. Indeed, these devices are so common that we think judicial cognizance may be taken of them."

Black Diamond Co. *vs.* Excelsior Co., 156 U. S., 616.

"The courts of the United States take judicial notice of the ports and waters of the United States where the tide ebbs and flows, of the boundaries of the several States and judicial districts, and of the laws and jurisprudence of the several States in which they exercise jurisdiction. Courts will take notice of whatever is generally known within the limits of their jurisdiction; and if the judge's memory is at fault he may refresh it by resorting to any means for that purpose which he may deem safe and proper."

Brown *et al. vs.* Piper, 91 U. S., 42.

The court will take judicial notice of a thing which is in common knowledge and use of the people through the country. It therefore holds that reissued letters patent No. 5748, granted to Matthias Terhune for an alleged new and useful improvement in corner sockets for show cases, are void for want of novelty.

Terhune *vs.* Phillips, 99 U. S., 592.

In Brown *vs.* Spilman, 155 U. S., 670, the court took judicial notice of the manner in which persons bore for oil, and that "when oil or gas is found in paying quantities it is not usual to consume it or reduce it to use at the wells, but it is conducted in iron pipes to large tanks or reservoirs, whence it is distributed by other pipes to the place of consumption, often many miles distant."

"The new course of trade to which the present war has given rise is notorious; and this court has abundant evidence in regard to it upon its own records. Neutral vessels, almost always under the British flag, are cleared from England with papers giving an ostensible destination, for both vessel and cargo, to Cardenas in Cuba, or Nassau, N. P., or Matamoras, on the Rio Grande in Mexico, all in neutral waters. Those destinations are used merely for call or transshipments, either as a new point of departure for a further voyage of the same vessel to a port of the enemy, or as a place of transshipment of the cargo to another vessel, in which it may enter the country of the enemy, the cargo being composed, in almost every instance, more or less, of articles contraband of war. * * *

* * * "The court will take judicial cognizance of the well-known facts that Matamoras lies on the right bank of the Rio Grande, the river which forms the boundary line between Mexico and the United States at that point, several miles up from the mouth of the river, and nearly opposite the town of Brownsville in Texas; that the river is very narrow at that place; and that, at the mouth of the river, is a bar which at all times prevents the entrance into the river of a vessel drawing as much water as the "Peterhoff;" she drawing, as was admitted by the counsel for the claimants at the hearing, about sixteen feet."

The "Peterhoff," Blatch. Prize Cases, 463; l. c., 509 and 521.

Treaties made by the Federal Government with the Indian tribes or with a foreign government are part of the supreme law and possess the full power and efficacy of an act of Congress,

Constitution, art. VI, cl. 2;
Holmes *vs.* Jemison, 14 Pet., 569;
Doe *vs.* Braden, 16 How., 635;
Stein *vs.* Lynham, 10 Otto, 483;

And all courts are bound to take judicial notice of their existence, dates, character, and contents, *and of the rights of persons under them*,

U. S. *vs.* Payne, 2 McCrary, 289;
U. S. *vs.* Reynes, 9 How., 127;
Foster *vs.* Neilson, 2 Pet., 314;
U. S. *vs.* Arredondo, 6 Pet., 691;

Public acts providing for surveys and things done thereunder,

Caha *vs.* United States, 152 U. S., 211;

Thus the courts notice the situation of quarter sections under such surveys,

Prigger *vs.* Exchange Ins. Co., 6 Wis., 89;
Dickinson *vs.* Breeden, 30 Ill., 279;

And also of their areas,

Quinn *vs.* Windmueller, 67 Cal., 461;

The treaties made by the United States are the law of the land, and the Federal courts not only notice the treaties themselves, but also public acts and proclamations and the

government with whom they are made in carrying them into effect,

United States *vs.* Reynes, 9 How., 127;

Both State and Federal courts, without pleading or proof, judicially notice treaties made by the General Government with foreign States or Indian tribes,

Montgomery *vs.* Deeley, 3 Wis., 709;
Lacroiz *vs.* Sarrazin, 15 Fed. Rep., 489;

And this recognition embraces the date of the consummation of such treaties, *as well as the particular rights and duties thereby imposed,*

Carson *vs.* Smith, 5 Minn., 578;
Dale *vs.* Wilson, 16 Minn., 525.

In Collson *vs.* Hope, 75 Fed. Rep., 758; l. c., 761, the court took judicial notice of the treaty between the United States and Russia under which the Territory of Alaska was acquired, the protocol and transfer of October 18, 1867; also of the map of New Archangel or Sitka attached and made a part of said protocol, *and, consulting that map,* held that the United States did not acquire title under the terms of the treaty to a certain lot located in Sitka.

In Hoyt *et al. vs.* Russell, 117 U. S., 401 (29 L. ed., 914), it is said:

"It is undoubtedly true that judicial notice is not taken of purely private concerns, *when they are not connected with or necessarily involved in a matter of public nature;* but it is otherwise when they are so connected or involved, for example, a court will take notice of the *boundaries of the State or Territory,* where it holds its sessions, *and of judicial dis-*

tricts and municipal subdivisions within it. If the public surveys have established the *distance from its capital to any such subdivision, the court will take judicial notice of the fact;* and if the property be shown to be within that subdivision, its distance also from the capital will be judicially noticed; *notice of the general fact embracing all the facts included in it.* In the present case, the court below was required to take notice of the extent of its jurisdiction, not only of the subjects placed by and under its cognizance, but of its extent territorially. It should have been known judicially whether the laws of the Territory, which it was appointed to expound, were in operation with reference to a subject brought before it in the regular course of procedure. It was bound to know whether they were in force *in the township designated in the county of Lewis and Clarke* on the 13th day of May, 1873, and that necessarily involved a knowledge of the distance from the capital of the Territory. It may be that the judge's information on the subject was at fault and calculations and inquiries on the subject may have been necessary. *Such is the case with reference to a great variety of subjects of general concern of which courts are required to take judicial notice.*

"Information to guide their judgment may be obtained by reference to original documents in the public archives or to books of history or science or any other proper source.

"*In this case it appears by the Government maps of the Territory upon which the public surveys are marked that the distance from the seat of government to the nearest point of the township* in which the mining ground in controversy is situated exceeds seventy-five miles. Act of May 8th, 1873, was not, therefore, in force there on the 13th of May, the date of the discovery of the Mammoth lode. The court having become informed on this subject should have so declared and its conclusion would not have been open to contest before the jury. It erred, therefore, in excluding the notice of the defendant's location for the omissions stated because no proof was offered

of the distance of the disputed ground from the seat of government where the act took effect on the day of its passage. The court said if there were any exceptions to it by reason of the distance of the Mammoth lode from that place, the defendants should have made the fact appear by proof holding that the act not being complied with the notice was inadmissible in evidence."

The opinion in this case was delivered by Mr. Justice Field and the judgment of the lower court was reversed and the cause remanded for new trial because the trial court refused to take judicial notice of the distance between the mining claim and the capital of the Territory, so as to bring the case within the terms of the act of the Territory of Montana under discussion, and it was held further that "while it is true that the courts declare that the function of judicial notice will be exercised with caution, this caution *is exercised only to determine whether the requisite notoriety exists.*"

The court will take judicial notice that a place at which an offense was committed is within its jurisdiction,

Hays *vs.* Com., 14 S. W. Rep., 833;

That a certain town is the county-seat of a certain county,

Cole *vs.* Seagraves, 88 Cal., 103;

And also that a certain county is included in a certain judicial district,

Reagan *vs.* Farmers' Loan & Trust Co., 154 U. S., —;

Proof will not be required whether a certain act was in force at a certain time,

Pickard *vs.* Pullman Southern Car Co., 117 U. S., 45;

And without proof geographical positions will be noticed,

U. S. *vs.* La Vengeance, 3 Dall., 301;

The "Apollon," 9 Wheat., —; l. c., 374;

Parks *vs.* Hunt, 7 Pet., 342;

And of the value of mail service in the State of Ohio,

Matthews *vs.* McStea, 91 U. S., 12;

And of a well-known map to which all recorded conveyances refer,

Patch *vs.* White, 117 U. S., 220;

Morris *vs.* United States, 174 U. S., 269;

In Kansas City *vs.* Smart *et al.*, 128 Mo., 272; l. c., 298, it is said:

"Finally, it is claimed the proceedings must fall because the record nowhere discloses the property sought to be condemned is in the State of Missouri or Jackson county. As to this it will suffice to say that the charter of Kansas City is a public act, of which we are required to take notice. By section 2, article 1, of the charter, it is provided that the corporate limits of Kansas City shall include all that district of country in the county of Jackson, State of Missouri, setting forth the boundaries of the surveys of the United States Government, the State line and the Missouri river. The ordinance is the act of this incorporated city, and the description of the streets upon which this improvement was proposed clearly brings it within the corporate limits of Kansas City."

And in Texas and Pacific Railway Co. *vs.* Cody, 166 U. S., —; l. c., 610, it is said:

"If in this case plaintiff had simply described defendant by its name, without more there would seem to be no ques-

tion that, as the corporation was judicially known to be a Federal corporation, defendant would be entitled to remove the case on proper allegations in its petition; and we think this necessarily follows, where, by some mistake, or otherwise, the defendant is erroneously stated to be created under State laws. Here defendant was described as 'a private corporation, created and existing under the laws of the State of Texas,' and this was repeated in an amended petition, filed in the circuit court; but no motion to remand was made, nor was the propriety of the removal questioned in any way. Possibly the pleader did not intend to deny the Federal character of the company, *but whether so or not, no issue was or could be made as to the source of its corporate existence.*"

In Silvey *vs.* Summer *et al.*, 61 Mo., 253, it is said:

"In addition to that, an examination of a sectional map of this State, discloses that although Morgan county lies north of the Osage river, yet in consequence of a large bend in that stream, the land in suit is in fact on the south side of that bend, but still in Morgan county."

WITH RESPECT TO THE PARTICULAR COURSE AND LOCATION, CONSTRUCTION, AND PUBLIC CHARACTER OF RAILROADS AS PUBLIC HIGHWAYS AND THE MODE AND MANNER AND GENERAL REGULATIONS UNDER WHICH THEY ARE OPERATED.

In G. C. & S. F. R'y Co. *et al. vs.* State, 10 S. W. Rep., 81; l. c., 82, it is said:

"In Wharton on Evidence our own law adopts the position that reason and evidence are the co-ordinate features which go to make up proof, and that the judge in trying a case must not only exercise his own intellectual faculties in construing and applying evidence but must draw on his

own sources of knowledge or such information as is common to all intelligent persons of the same community. Such information must not only thus be common but must be of indisputable truth. When it becomes disputable it ceases to fall under the head of notoriety."

1 Whart. Ev., sec. 329.

The Supreme Court of the United States say:

"It certainly cannot be laid down as a universal or even as a general proposition that the court can judicially notice matters of fact, yet it cannot be doubted that there are many facts, particularly with reference to geographical positions of such public notoriety, and the knowledge of which is to be derived from other sources than parol proof, which the court may judicially notice."

Thus in the case of U. S. *vs.* "La Vengeance," 3 Dall., 297, the court judicially notices the geographical position of Sandy Hook.

"And it may certainly take notice judicially of like notorious facts, as that the bay of New York, for instance, is within the ebb and flow of the tide."

Peyroux *vs.* Howard, 7 Pet., 324.

"The court is bound to take judicial knowledge of the leading geographical features of the land, the minuteness of the knowledge or expected view in inverse proportion to the distance."

1 Whart. Ev., 339.

The principle has been applied in various ways, as the following cases will show:

Trenier *vs.* Stewart, 55 Ala., 458;
Gibson *vs.* Stevens, 8 How., 399;
Vanderwecker *vs.* People, 5 Wend., 530;

Pearce *vs.* Langfit, 101 Pa. St., 577;
Steinmetz *vs.* Turnpike Co., 57 Ind., 457;
Tewksbury *vs.* Schulenberg, 41 Wis., 584;
Walker *vs.* Allen, 72 Ala., 456;
Oppenheim *vs.* Wolf, 3 Sanf. Ch., 571;
Neaderhouse *vs.* State, 28 Ind., 257.

In Railway Co. *vs.* Rushing, 69 Tex., 306 (S. C., 6 S. W. Rep., 834), Chief Justice Willie says:

"It may be that this court, judicially knowing the geography of the State, might take notice of the general jurisdiction of these two roads, as fixed by the statutes under consideration that their lines must necessarily cross each other, and could, therefore, treat them as connecting lines and not parallel to each other, but as to whether they are competing lines, we could have no judicial knowledge whatever.

"This latter proposition as a general rule, and as applied to the case then before the court, is undoubtedly correct. Whether two roads which intersect each other at a certain point are competitors for freight or not must depend upon a variety of circumstances not known to the court.

"But the varieties stated show that we must take notice of the geography of the State and at least of its navigable streams. It is a matter of history that important lines of railroad, once established, have remained as fixed and as permanent in their course as the rivers themselves. They supersede, in the main, all other means of travel between the points which they touch and become as well, if not better, known than any other geographical feature of the country. Their locality becomes 'notorious and indisputable,' for instance, could we doubt that the Houston and Texas Central road runs from Houston to Tyler, and that the Gulf, Colorado & Santa Fe touches within its line the same point?

"Could we doubt that they run for a considerable portion of their lines practically parallel to each other, and that they

must necessarily compete for the traffic lying between them? We think we must take judicial notice that these two roads are parallel and competing lines. And this is sufficient, so far as the disposition of this case is concerned.

"We are of the opinion that the finding would have been sufficient to support the judgment, if it had been that but two of the defendants were competitors with each other for traffic. The same may be said as to a portion of the lines of the Texas & Pacific Co., and the St. Louis, Arkansas & Texas Co., which extend from Sherman to Texarkana. We cannot shut our eyes to the notorious and indisputable facts that these portions of the respective lines touch at the same points, and that they are natural competitors for the traffic of a large scope of country."

In this case it was held that the court could rightfully take judicial notice of the fact that two railroads and other railroads connected with them touch the same points and are practically parallel and necessarily competing lines. (This was a suit in equity brought by the State through the attorney general to prevent the defendants from carrying out an agreement in which they organized a body of representatives appointed by the companies parties to the agreement, which body had the right to fix rates on freight carried to and from points within the State.)

In Miller *et al. vs.* Texas & N. O. R'y Co., 18 S. W. Rep., 954, it is said:

"There are certain facts, however, which may be judicially noticed by the court, because of their public notoriety and indisputable existence. Railroads are public highways, and it is a matter of history that important lines of railroad, once established, have remained as fixed and permanent in their course as the rivers themselves. Their locality be-

comes so notorious and indisputable that the courts will take notice thereof" (Railway Co. *vs.* State, 72 Tex., 410, S. C., 10 S. W. Rep., 81).

"So the court would take notice of the locality of the defendant's line of railroad, for it is a physical and geographical fact of undisputed notoriety."

In G. H. & S. A. R'y Co. *vs.* Johnson, 29 S. W. Rep., 428, it is held that it is error to charge that the defendant must prove that defendant's railway does not extend beyond a certain place, since the courts take judicial notice of the termini of railroads, and, discussing the matter, it is said, l. c., 430:

"The courts take judicial cognizance of the locality of defendant's railroad (Miller *vs.* R'y Co., 83 Tex., 518; S. C., 18 S. W. Rep., 954).

"This necessarily involves judicial knowledge of where the line terminates."

The court charged the jury that it must be proved by defendant that the line of the Galveston, Harrisburg and San Antonio R'y Co. did not extend beyond Houston. And this charge was held error for the reason already stated.

In Hunt *et al. vs.* Atchison, Topeka and Santa Fe R'y Co., 28 S. W. Rep., 460, it is said:

"This court is authorized to take judicial knowledge of the fact that a line of railroad, notoriously known as that of the Atchison, Topeka & Santa Fe railroad, extends into El Paso county in this State" (Miller *vs.* R'y, 83 Tex., 520; 18 S. W. Rep., 954; Gulf, Colorado and Santa Fe *vs.* State, 72 Tex., 409; 10 S. W. Rep., 81).

In Texas and Pacific R'y Co. *vs.* Black, 27 S. W. Rep., 118, it is held that it is a matter of judicial knowledge that several railroads run into the city of Texarkana, and with respect to this matter the court says, l. c., 120:

"This court knows judicially that there are a number of railroads besides that of defendant running into Texarkana (G. C. & S. F. R'y *vs.* State, 72 Tex., 404; 10 S. W., 81)."

Courts will take judicial notice of the fact that a certain county adjoins another, and that there are facilities for a connection by railroad and telephone between two certain places,

Evans *vs.* Kilby, 81 Ga., 278,

Or that a road running from one terminus to another is located wholly within a certain county.

Stein *vs.* Versailles Turn Pike Co., 57 Ind., 457.

Courts will take judicial notice of the manner in which the great railroads of the country are managed in matters pertaining to the ordinary and usual operation thereof in their intercourse with the public,

Slater *vs.* Jewett, 85 N. Y., 61;

And of the use of telegraph lines in connection with railroads,

State *vs.* Ind., etc., R'y Co., 133 Ind., 69.

Courts will take judicial notice of the comparative length and amount of traffic over different roads,

St. Louis Bridge, etc., R'y Co. *vs.* People, 127 Ill., 627 (39 A. & E. R. R. Cas., 562).

The court will take judicial notice of the ordinary course and usage of business of railroad corporations, for instance, with respect to the usage of carriers in checking through baggage,

Isaacson *vs.* N. Y. & H. R. R. R. Co., 94 N. Y., 278;

Also that trains are operated by telegraph,

Slater *vs.* Jewett, 85 N. Y., 61;

Courts will take judicial notice of the statement and report of commissioners of railroads,

C. & W. B. R'y Co. *vs.* Hoffhines, 46 Ohio St., 643;

Of the distance between the principal cities of the country and the time required for railroad trains to run to and from them,

Clair *vs.* Chicago, B. & Q. R'y Co. (Iowa), 45 S. W. Rep., 470;

Pearce *vs.* Langfit, 101 Pa. St., 507;

Of the facilities for public travel between different points,

Morgan *vs.* Farrell, 58 Conn., 413;

Maghie *vs.* Camden & Amboy R'y Co., 45 N. Y., 574;

Manning *vs.* Gasparie, 27 Ind., 399;

Of the functions of railway officers, like ticket agents and conductors, and that the abbreviation "Supt." stands for word "superintendent,"

South Missouri Land Co. *vs.* Jeffries, 40 Mo., 360;

That the driver of a street car is subject to the conductor's orders,

Seaman *vs.* Koehler, 122 N. Y., 646;

Of the acts of *building* and running railroads in different places,

Wellman *vs.* Chicago & I. R'y Co., 83 Mass., 593;

Of the course of business of railroad companies in transferring cars over more than one line of railroad without breaking bulk,

Burlington R. & N. R'y Co. *vs.* Day, 82 Ia., 312;

The rules and regulations of railroad companies,

Highland Ave. B. R. R. Co. *vs.* Walters (Ala.), 8 South. Rep., 357.

In U. P. R'y Co. *vs.* Richmond & C. R'y Co., 96 Va., 674 (32 Southeast Rep., 788), it is held courts will take judicial notice that maintenance of gates and a flagman at crossings diminishes danger of accidents.

In Louisville & Nashville R'y Co. *vs.* Boland, 18 L. R. A., 260, it is held that judicial notice will be taken, as a matter of common knowledge, that the demands of commerce require the cars of one railroad company to be hauled over other railroads.

"We apprehend that the ordinary speed of railway trains is a matter of judicial cognizance and hence a very simple computation will demonstrate with approximate certainty the time within which mails may be transported between such cities as New York and Pittsburgh."

Pearce *vs.* Langfit, 101 Pa. St., 737.

"The court had judicial knowledge that Ansonia was easily accessible from New York city by railway, and that there was frequent communication by mail, or that the tele-

graph might have been used and a reply obtained in half an hour and at trifling expense. When so many circumstances called for inquiry, and with all these means by which inquiries could have been satisfied, and when none of them were used, we cannot hold that the plaintiff's assignors exercised good faith or due diligence to know the truth."

Morgan *vs.* Farrel, 58 Conn., 413.

"The manner in which railway companies conduct their business has been so long followed, with such a degree of uniformity, that the courts are bound to take judicial notice of these general features.

"Among those may be mentioned the division of their freight and passenger business into two departments, and the separation of their passenger and freight trains. As a general rule, freight is not carried upon passenger trains and passengers are not carried upon freight trains."

Atchison, Topeka & Santa Fe R'y Co. *vs.* Headland, 20 L. R. A., 822; l. c., 825.

In Oren, attorney general, *vs.* Pingree, 46 L. R. A., 407; l. c., 416, it is held that judicial notice, as a matter of common knowledge, will be taken of the fact that over some street car lines large cars are run at frequent intervals carrying freight.

Third.

DOES THE BILL SHOW AN ATTEMPTED OBSTRUCTION OR DESTRUCTION OF INTERSTATE COMMERCE WITH OR WITHOUT THE APPLICATION OF THE DOCTRINE OF JUDICIAL NOTICE, AND IF THE STATE OF ARKANSAS BE THE REAL PARTY IN INTEREST, DOES THE BILL SHOW AN ATTEMPTED DENIAL OF RIGHTS, PRIVILEGES, AND IMMUNITIES GUARANTEED BY THE FOURTEENTH AMENDMENT?

It is said by the court, in delivering the opinion in this case, that "the averments brought no controversy in this regard into court in respect of which resort might be had to judicial notice."

It is submitted that this statement was made without a proper understanding of the boundaries of the western district of Arkansas, and of the twelfth judicial circuit of Arkansas, and of Sebastian county, Arkansas, and of the city of Ft. Smith, and of the location of the St. Louis and San Francisco railroad in said State and judicial circuit, a matter of common knowledge, open, notorious, and indisputable.

The statement which precedes this argument shows clearly and plainly (and which statement was not made in the original brief before, owing to inadvertence of counsel and for the reason that the facts are so open and notorious at Ft. Smith that it was not thought necessary to mention them in detail) that the boundary line between the Choctaw Nation and the Indian Territory is just west of the national cemetery at Ft. Smith, and that the Poteau river, which flows into the Arkansas river opposite Ft. Smith and forms

the southwestern boundary of that portion of the Indian Territory east of the Poteau river and east of the Arkansas river, adjoins Ft. Smith opposite section 17, of township 8, range 32, and this location is mentioned in the act of Congress granting the right of way to the St. Louis and San Francisco railroad through the old military reservation at Ft. Smith.

The St. Louis and San Francisco railroad, after crossing a bridge over the Arkansas river (authorized under the act of Congress of July 3, 1882), runs south to the city limits of Ft. Smith, and then near the wharf along the Arkansas river a little southeast, and then turns to the southwest through the old military reservation, and within a few feet of the national cemetery at Ft. Smith, and then runs south three miles in Arkansas, and enters the Indian Territory, and continues in the Indian Territory for about eight or ten miles, and then enters the State of Arkansas for a short distance, until a point north of the town of Jenson is reached, when, with a sharp southwest turn, the main line of said railroad runs out into the Indian Territory past Jenson station, the main line, track, and platform at said station being located in the Choctaw Nation, and the station-house right on the western line of the State of Arkansas—so close, in fact, that when a passenger leaves the station-house and steps out on the platform he leaves the State of Arkansas and enters the Choctaw Nation, and when he boards or alights from a train standing on the track at said station the train is located in the Indian Territory.

All of these facts are open, notorious, and indisputable at Ft. Smith and throughout the western district of Arkansas, and they are matters of such everyday, common knowledge

that every person in that community is acquainted with them; and, in addition, every fact to which attention has been called is proven by an act of Congress or by an act of the legislature of Arkansas or by some treaty entered into between the United States and some one of the Indian tribes.

The circuit court certainly had the right to take judicial notice of the fact that the St. Louis and San Francisco railroad was constructed through the old military reservation at Ft. Smith and near the national cemetery, as authorized by act of Congress, and that at a point immediately south of section 17, township 8, range 32 (about three miles), said railroad leaves Sebastian county and leaves the western district of Arkansas and enters the Indian Territory; and this is a matter open, notorious, and indisputable. Said railroad is a post-route and a great public highway leading from St. Louis, Missouri, to Paris, Texas, as shown in the various acts of Congress which have been called to the court's attention.

The circuit court also have the right to take judicial notice of the fact that the town of Jenson was located on the western border of the State of Arkansas, in Sebastian county, and that the location of said railroad was such with respect to Jenson station that no person could travel from the north or the south over said railroad into said station without being carried through a portion of the Indian Territory.

The allegations of the bill show clearly that the St. Louis and San Francisco railroad enters the twelfth judicial circuit, because an attempt is made to enjoin the transportation of a certain class of men by said railroad into said

circuit and into Sebastian county, and especially Huntington, in said county, and the men whose transportation the bill was filed to prevent were certainly located outside of the twelfth judicial circuit, else the complainant would not seek to enjoin their transportation thereto; and said railroad had lines of railroad outside of said judicial circuit, otherwise it would have been impossible for it to transport such men into said circuit, and the circuit court had the right to take judicial notice of the act of the legislature of Arkansas, which determined the limits of the twelfth judicial circuit and the counties contained therein, to wit, Sebastian and Scott, and their location with respect to each other and their location with respect to the western boundary of Arkansas and the eastern boundary of the Choctaw Nation; and the circuit court had the right to take judicial notice of the course of the Arkansas river and of the course of the Poteau river and of the location of these rivers with respect to each other and with respect to the city of Ft. Smith; and it had the right to take judicial notice of the location of the city of Ft. Smith, of the old military reservation and of the national cemetery in Ft. Smith (both established by acts of Congress) and of the acts of Congress which gave said railroad the right to extend its line through the old military reservation and of the distance from the Federal building at Ft. Smith to the national cemetery and to the military reservation and the southern boundary of Ft. Smith and to the point where the southern boundary line of Ft. Smith and the western boundary line of Sebastian county and of the State of Arkansas met and joined the eastern boundary line of the Choctaw Nation.

All of these facts of which the court had the right to take

judicial notice, and which were open, notorious, and indisputable within the limits of the western district of Arkansas, and of which the State courts of Arkansas take judicial notice, not only at common law, but under the provisions of their statute (to which reference has been made), knew all of these facts as a part of the bill of complaint, and to the same extent as if all of said boundary lines had been mentioned expressly in the bill of complaint and the location of the line of the St. Louis and San Francisco railroad had been described at length therein.

All of these things being true, the circuit court knew, as a fact and as a matter of judicial knowledge, that it was impossible for the St. Louis and San Francisco railroad to be enjoined from bringing men of a certain class into the limits of the twelfth judicial circuit from points outside thereof and into Huntington, Sebastian county, Arkansas, or into said circuit, without bringing them from the south or from the north of the town of Jenson, and the circuit court knew that if such men were transported over said railroad through Ft. Smith from points north of Sebastian county or from Ft. Smith that they would be carried through eight or ten miles of the Indian Territory to reach the town of Jenson, and would alight from the train in the Indian Territory and walk across the station platform and enter the State of Arkansas in the station-house, and the circuit court knew that if they were brought from the south they would come entirely through the Indian Territory after leaving the northern boundary of the State of Texas.

It seems, it is respectfully submitted, impossible, under these circumstances, to resist the conclusion that the bill of complaint upon its face did show that the State of Arkansas,

if the real party in interest, was attempting by this proceeding in equity not only to obstruct and interfere with interstate commerce, but actually to destroy it so far as it was being performed by this great public highway, the St. Louis and San Francisco railroad, and certainly, that being true, a Federal question did arise upon the face of the bill of complaint and, by virtue of plaintiff's statement of his own claim, whether the State of Arkansas had the right in any court, under the interstate-commerce clause of the United States Constitution and under the provisions of the fourteenth amendment, to do the things which the State of Arkansas sought to do under this bill of complaint.

And this statement applies to an attempted regulation of interstate commerce (a matter exclusively committed to Congress), and it would apply to the denial of rights, privileges, and immunities to certain citizens of the United States which were granted to other citizens of the State of Arkansas, even assuming that this court is correct in considering the bill to be limited in its application to citizens of Arkansas.

And it is submitted that the State of Arkansas in this proceeding is asserting the right to do by injunction, in the absence of any law announcing the public policy of the State, what could not be done by law under the Constitution of the United States, because any such law would be an attempted regulation of interstate commerce (something left exclusively to Congress), and this proposition is announced clearly and unequivocally in the case of Hannibal & St. Joe Railroad *vs.* Husen, 95 U. S., 469.

The fact that the State of Arkansas has no duty to perform in protecting interstate commerce (176 U. S., 19) does

not prevent the State from obstructing and interfering with interstate commerce, and the necessary effect of the thing sought to be done under this bill of complaint is an interference with interstate commerce.

The doctrine of judicial notice in this case is only necessary for the purpose of locating the boundaries of the western district of Arkansas, the boundaries of the twelfth judicial circuit, the boundaries of Sebastian and Scott counties, and the boundaries of the city of Ft. Scott, and of the western boundary of the State of Arkansas and of the eastern boundary of the Choctaw Nation, and all of these things are not only open, notorious, and indisputable in the western district of Arkansas, but they are all fixed by positive law, to wit, by treaties with the Indian tribes, by acts of Congress, and by acts of the legislature of the State of Arkansas. And the location of the St. Louis and San Francisco railroad is definitely fixed by an act of Congress through the military reservation in the city limits of Ft. Smith, and this court knows, as a matter of judicial knowledge, that the St. Louis and San Francisco railroad could not have been constructed south of Ft. Smith through the Indian Territory except under authority of an act of Congress.

This proposition is amply supported by the case of Spokane Falls and Northern Railroad Co. *vs.* Ziegler (167 U. S., 65; l. c., 72), where it was held that the authority of a certain Territory to legislate with respect to a right of way for a railroad therein to enter upon public lands was derived from a certain act of Congress—in other words, without the act of Congress that the Territory would have had no right to pass any such law.

And so here the St. Louis and San Francisco railroad had

no right to enter the Choctaw Nation, except under authority of an act of Congress, and had no right to enter the nation at any place except as authorized thereby.

This court, in the case of Reagan *vs.* Farmers' Loan & Trust Co. (154 U. S.), held that the circuit court and the supreme court had the right to take judicial notice of the fact that Austin was the county-seat of Travis county, and that Travis county was one of the counties included within the western district of Texas.

The State of Arkansas, in its bill of complaint in this case, asserts the right to prevent the doing of all of the things which it asks to be enjoined. In other words, it asserts the right to prevent the entrance into the State of Arkansas of a certain class of men and their transportation into the twelfth judicial circuit over a certain railroad.

And if, as a matter of fact, that transportation is interstate transportation, then the State of Arkansas is seeking to obstruct and interfere with interstate commerce—a matter exclusively committed to the regulation of Congress; and it does not make any difference whether the State of Arkansas seeks to do this under the Constitution of the United States or by virtue of any other authority or power.

If the State of Arkansas is endeavoring to accomplish a certain thing which the Constitution of the United States prohibits, then the construction of the Constitution is a necessity in order to determine the judgment to be given with respect to the prayer of the bill.

In the great case of Gibbons *vs.* Ogden (9 Wheat., 1), it is said:

"But on all matters that are the subject of commerce within the meaning of the commerce clause of the Federal

Constitution, State regulations must be limited to subjects of police power *and must not themselves be the regulation of commerce.*"

It is respectfully submitted that this court will not announce the proposition that the bill of complaint or declaration does not show a question arising under the Constitution and laws of the United States, except when the pleader, in so many words, asserts therein that the cause of action itself arises as a matter of fact under the Constitution and laws of the United States.

In other words, if the bill or declaration, by a process of legal deduction from the allegations thereof, does show that the relief prayed for cannot be granted without a construction of the Constitution and laws of the United States, then a Federal question does arise upon the face of the bill or declaration, and is shown by the plaintiff's statement of his own claim.

And, further, this is especially true where it can be seen by judicial inspection of the allegations of the bill or declaration that the case stated cannot be determined except as a result, and after a construction of some provision of the Constitution or of some law of the United States. In other words, judgment cannot be given under the allegations of the bill or declaration without calling in question or giving construction to some provision of the Constitution of the United States or some law or treaty thereof.

This question, it is submitted, does not concern the other question whether the bill or declaration alleges facts sufficient to state a cause of action at law or in equity, or whether the complainant or plaintiff will ultimately obtain the relief which he seeks under the allegations of the bill

or declaration, because that is a question upon the merits of the case; and the only question which arises in the circuit court on motion to remand, or which arises in this court when this court seeks to determine whether the circuit court had jurisdiction, is whether the plaintiff's statement of his own claim (that is to say, whether the allegations of the bill or declaration and the legal deductions and conclusions which must be drawn therefrom) do show that some provision of the Constitution of the United States will be called into question or will have to be construed to determine the ultimate question of law whether the plaintiff or complainant under the bill or declaration can have the relief prayed for.

And when it is seen that some provision of the Constitution will be called into question, or some provision of some law of the United States will have to be construed one way or the order in order to support or defeat the case made in the bill or declaration, then a Federal question does arise upon the face of the complaint and is made by plaintiff's statement of his own claim; and this is also true when the allegations of the bill or declaration are such that the legal mind must conclude that the Constitution of the United States bars the way to the relief sought.

It will hardly be contended that the legal effect, application, and operation of the allegations of the bill or declaration are no longer the subject of legal examination, and it will hardly be contended that in order to ascertain whether a Federal question arises upon the face of the bill or declaration that we are limited entirely to the allegations of the bill or declaration and cannot determine the legal effect, application, and operation of those allegations under the Con-

stitution and laws of the United States in connection with the prayer for relief.

Nor can it be said that, to give the circuit court jurisdiction of a Federal question, the plaintiff must allege all facts which are matters of common knowledge and open, notorious, and indisputable in the community in which the circuit court sits; and especially is this true where the statute of the State expressly provides, both in criminal and civil cases, that neither presumptions of law nor matters of judicial knowledge need be stated in any indictment or pleading.

So that the circuit court at Ft. Smith had the right to take judicial knowledge of every fact of which the State courts of Arkansas would have taken judicial notice, and a reference to the decisions of the Arkansas supreme court shows their broad construction of the statute with respect to judicial notice.

It is only by legal deductions and conclusions from the allegations of the bill or declaration and from the facts stated therein, coupled with judicial knowledge of the physical facts, boundary lines, etc., of the district covered by the allegation of the bill or declaration, and applying thereto legal principles, that the court is enabled to determine whether any provision of the Constitution of the United States will be called in question and whether any construction of the Constitution or laws of the United States will be necessary in order to determine the case presented.

The bill in the case of Tennessee *vs.* Bank (152 U. S., —) was filed in the circuit court, and the allegation is made therein that defendant would claim that the act under which the taxes sued for were levied was void as an impairment

of the obligation of contract, and it was said in that case that such an allegation would have been stricken out, on motion, as surplusage, and this statement simply means that for the purpose of invoking the jurisdiction of the circuit court upon the sole ground that there is a controversy arising under the Constitution and laws of the United States (which must be made to appear on the face of the bill) that what defendant will claim or contend in making his defense to the bill or declaration makes no difference whatever, for plaintiff's case must be complete in itself, and plaintiff's bill must show a state of facts which entitles the circuit court in the first instance to take cognizance of the particular case; and in this cause the State of Arkansas was or was not the real party in interest, and upon that issue the question turns—that is to say, if the State be the real party in interest, then one Federal question arises, because the action is founded upon a provision of the Constitution and authorized thereby; otherwise there is diversity of citizenship and we need not look for a Federal question, though several would remain and be shown, it is submitted, upon the face of the bill of complaint.

To put the matter another way: In Tennessee *vs.* Bank, the State, as plaintiff, was trying to stay in the Federal court in a suit against one of its own citizens by alleging in its declaration that defendant would claim a second legislative act was an impairment of contract obligation under a former act, and defendant might never make any such claim, and without a statement of what defendant would claim plaintiff hoped for no standing in the Federal court and had none with it. Here, on the contrary, if the State be two real party in interest we meet the test for removal, for the citizens of

another State are defendants, and we meet the same test if the State be not the real party in interest, for there we have diversity of citizenship, and with or without diversity of citizenship we have several Federal questions, *i. e.*, whether the State or the people of one of its judicial circuits (or prosecuting attorney) can have the relief prayed for under the Constitution of the United States, and this determines the removability of the cause at the time the petition therefor was filed, *irrespective of the fact that judgment after removal must go in favor of defendants upon the facts pleaded.*

St. Louis & San Francisco Railroad Co. *vs.* McBride, 141 U. S., 127;
Marshall *vs.* Holmes, 147 U. S., 589;
Schunk *vs.* Moline, etc., Co., 147 U. S., 500;
Pacific Express Co. *vs.* Seibert, 140 U. S., 692.

The point that the necessary effect of the bill is an attempt to regulate interstate commerce is elaborated in the fifth, seventh, and eighth subdivisions of the petition for rehearing.

It may perhaps be said without fear of contradiction that the State of Arkansas would be interested in enjoining the transportation of men of the class objected to into any part of the State rather than into the twelfth judicial circuit alone (assuming that they could not be the source of contagious and infectious diseases, for the bill does not allege they have any such) unless they were so afflicted.

The circuit court found that interstate commerce would be obstructed and impeded, and its opinion in the record so shows, and of its contents this court will take judicial notice (Loeb *vs.* Columbia Township Trustees, 179 U. S., 472;

l. c., 483); and this finding was based upon considerations such as are set forth in the fifth, seventh, and eighth subdivisions of the petition for rehearing, but more especially based upon the fact that the court knew judicially and personally that no person could be transported over the St. Louis and San Francisco road into Huntington from points north or south of Jenson without being carried through the Indian Territory and Jenson.

It is earnestly insisted that the petition for rehearing should be granted and the judgment of the circuit court affirmed, after oral argument, if deemed necessary by this honorable court.

If the test of removability is to be determined, therefore, by the question of whether the plaintiff or complainant in a particular case should have invoked the jurisdiction of the circuit court in the first instance, then it is submitted, and with confidence, that this case was certainly removable into the circuit court.

All of which is respectfully submitted.

ADIEL SHERWOOD,
With JOSEPH M. HILL AND
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Attorneys for Kansas and Texas Coal Company.

Supreme Court of the United States.

No. 42.—October Term, 1901.

The State of Arkansas, Appellant, vs. The Kansas and Texas Coal Company and The St. Louis and San Francisco Railroad Company.	Appeal from the Circuit Court of the United States for the Western District of Arkansas.

[December 2, 1901.]

This was a bill filed in the circuit court of Sebastian County, for the district of Greenwood, Arkansas, by "The State of Arkansas, on the relation of Jo Johnson, prosecuting attorney for the 12th judicial circuit," against the Kansas and Texas Coal Company and the St. Louis and San Francisco Railroad Company, which, "for her cause of action," alleged, that the railroad company was "a corporation organized under the laws of the State of Missouri, owning and operating a railroad in the 12th judicial circuit of Arkansas and more particularly in Sebastian County, of said circuit;" that the coal company was "a corporation duly organized under the laws of the State of Missouri, owning and operating a coal mine in Huntington, in the Greenwood district of Sebastian County." "That a high state of excitement and condition of hot blood now prevails between striking miners and their sympathizers in large numbers, on the one side, and said coal company and its employees, on the other. That said coal company is threatening and is about to import into said county and town of Huntington, over the line of their co-defendant's railroad, a large number of armed men of the low and lawless type of humanity, to wit, about two hundred, to the great danger of the public peace, morals, and good health of said county, and more particularly of said town. That said threatened action on the part of said defendant, if permitted to be executed, would become a great public nuisance and would destroy the peace, morals, and good health of said county and town, and would lead to riot, bloodshed, and to the dissemination of contagious and infectious diseases."

The bill prayed "that the defendant Kansas and Texas Coal Company, its agents, servants, and employees, and each of them, be restrained and prohibited from importing or causing to be imported or brought into Sebastian County or the 12th judicial circuit of Arkansas, and that the Saint Louis and San Francisco Railroad Company, its agents, servants, and employees—each, both, and all of them—be enjoined, restrained, and prohibited from importing, hauling, or bringing, or causing to be imported,

hauled, or brought, in the said county or circuit, and from unloading or attempting to unload from any of its cars in said county or circuit any and all large bodies of armed, lawless, or riotous persons or persons affected with contagious or infectious diseases that might endanger the peace, good order, or good health of the State, or create a public nuisance in said county or circuit, under the pains and penalty of the law."

A preliminary injunction was granted and process issued. Defendants filed their petitition and bond for removal, and made application therefor, which was denied by the circuit court of Sebastian County, whereupon defendants filed in the United States Circuit Court for the Western District of Arkansas a certified transcript of the record and of the pleadings and papers in the case.

The petition for removal averred that Jo Johnson was a citizen of Arkansas, that defendants were citizens of Missouri, and that the controversy in the suit was wholly between citizens of different States; and also that, treating the State of Arkansas as complainant, the suit was one arising under the Constitution and laws of the United States because defendants were engaged in interstate commerce, and the action was an unlawful interference therewith by reason of the commerce clause of the Federal Constitution and of laws passed in pursuance thereof; and which constituted a defense in the premises.

Complainant moved to remand the cause, and defendants moved to dissolve the injunction, and that complainant be restrained from the prosecution of the suit in the State court. The Circuit Court of the United States overruled the motion to remand, and sustained the motion to dissolve, but declined to enjoin complainant. 96 Fed. Rep. 353. The cause came on subsequently for final hearing, the bill was dismissed, and this appeal was prosecuted.

Mr. Chief Justice FULLER delivered the opinion of the Court:

The gravamen of the bill was the injury to the health, morals, peace and good order of the people of the town and county, the infliction of which was alleged to be threatened by the bringing within their precincts of certain persons by defendants. No statute of the State was referred to as applicable, but the enforcement of the police power was sought through the interposition of a court of equity by way of prevention of an impending public nuisance. The Circuit Court was of opinion that the bill could not be maintained, but, without intimating any conclusion to the contrary, or criticising its formal sufficiency, the question that meets us on the threshold is whether the case ought to have been remanded to the State court.

We need not spend any time on the contention that this was a controversy between citizens of different States. The Circuit Court correctly

held otherwise, The State of Arkansas was the party complainant, and a State is not a citizen. *Postal Telegraph Cable Company* v. *Alabama*, 155 U. S. 482.

We inquire, then, if the cause was removable because arising under the Constitution or laws of the United States.

The general policy of the act of March 3, 1887, as corrected by the act of August 13, 1888, (24 Stat. 552, c. 373; 25 Stat. 433, c. 866,) as is apparent on its face, and as has been repeatedly recognized by this court, was to contract the jurisdiction of the Circuit Courts. Those cases, and those only, were made removable under section two, in respect of which original jurisdiction was given to the Circuit Courts by section one. Hence it has been settled that a case cannot be removed from a State court into the Circuit Court of the United States on the sole ground that it is one arising under the Constitution, laws or treaties of the United States, unless that appears by plaintiff's statement of his own claim; and if it does not so appear, the want of it cannot be supplied by any statement of the petition for removal or in the subsequent pleadings. And moreover that jurisdiction is not conferred by allegations that defendant intends to assert a defense based on the Constitution or a law or treaty of the United States, or under statutes of the United States, or of a State, in conflict with the Constitution. *Tennessee* v. *Bank*, 152 U. S. 454; *Chappell* v. *Waterworth*, 155 U. S. 102; *Walker* v. *Collins*, 167 U. S. 57; *Sawyer* v. *Kockersperger*, 170 U. S. 303; *Florida C. & P. R. R. Co.* v. *Bell*, 176 U. S. 321.

In this case the State asserted no right under the Constitution or laws of the United States, and put forward no ground of relief derived from either. There were no averments on which the State could have invoked the original jurisdiction of the Circuit Court under section one of the act, and that is the test of the right of removal under section two.

The police power was appealed to, the power to protect life, liberty and property, to conserve the public health and good order, which always belonged to the States, and was not surrendered to the general government, or directly restrained by the Constitution. The Fourteenth Amendment, in forbidding a State to make or enforce any law abridging the privileges or immunities of citizens of the United States, or to deprive any person of life, liberty or property without due process of law, or to deny to any person within its jurisdiction the equal protection of the laws, did not invest Congress with power to legislate upon subjects which are within the domain of State legislation. *In re Rahrer*, 140 U. S. 554. It is true that when the police power and the commercial power come into collision, that which is not supreme must give way to that which is supreme. But how is such collision made to appear?

Defendants argue that the Circuit Court might have properly taken judicial notice, or did so, of the fact that the persons whose advent was

objected to as perilous to the community could only be brought to Huntington by way of the Indian Territory, and also that the word "import" as used in the bill meant to bring into from another State or foreign country; that, therefore, "the question is fairly presented by the complaint whether the State of Arkansas has the authority to prevent the coal company and the railroad company from bringing into the State over the line of this railroad, laborers from other States or foreign countries;" and hence that the Circuit Court had jurisdiction. We do not agree with either premise or conclusion.

The word "import" necessarily meant bringing into the county and town from outside their boundaries, but we do not think, taking the whole bill together, that as here used its necessary signification was the bringing in from outside of the State.

And as to judicial knowledge, the principle applies "that the right of a court to act upon what is in point of fact known to it must be subordinate to those requirements of form and orderly communication which regulate the mode of bringing controversies into court, and of stating and conducting them." Thayer, Ev., ch. VII, 281.

In *Mining & Milling Company* v. *McFadden*, 180 U. S. 533, which was a petition for removal, the suit was one brought in support of an adverse claim under the Revised Statutes, sections 2325, 2326, and it had been previously decided that such a suit was not one arising under the laws of the United States in such a sense as to confer jurisdiction on the Federal courts regardless of the citizenship of the parties. And we said: "It is conceded by counsel on both sides that those decisions are controlling, unless the Circuit Court was entitled to maintain jurisdiction by taking judicial notice of the fact 'that the Mountain View lode claim was located upon what had been or was an Indian reservation,' and 'of the act of Congress declaring the north half of the reservation, upon which the claim was located, to have been restored to the public domain;' notwithstanding no claim based on these facts was stated in the complaint. But the Circuit Court could not make plaintiffs' case other than they made it by taking judicial notice of facts which they did not choose to rely on in their pleading. The averments brought no controversy in this regard into court, in respect of which resort might be had to judicial knowledge." *Oregon Short Line &c. Company* v. *Skottowe*, 162 U. S. 490; *Chappell* v. *Waterworth*, 155 U. S. 102; *Commonwealth* v. *Wheeler*, 162 Mass. 429; *Partridge* v. *Strange*, Plowden, 77.

But even assuming that the bill showed upon its face that the relief sought would be inconsistent with the power to regulate commerce, or with regulations established by Congress, or with the Fourteenth Amendment, as contended, it would only demonstrate that the bill could not be maintained at all, and not that the cause of action arose under the Constitution or laws of the United States.

When Federal questions arise in cases pending in the State courts, those courts are competent, and it is their duty, to decide them. If errors supervene, the remedy by writ of error is open to the party aggrieved. *Robb* v. *Connolly*, 111 U. S. 624, 637.

Decree reversed and cause remanded with a direction to remand to the State court. Costs of this court and of the Circuit Court to be paid by the appellees and defendants.

True copy.

Test

Clerk Supreme Court, U. S.